

Memorandum 2010-52

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Clean-Up Legislation (Draft Tentative Recommendation)**

Two large bills implementing the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* were enacted earlier this year and will become operative on January 1, 2012. Before that legislation becomes operative, some further statutory clean-up is needed to fully effectuate the statutory reorganization and address related matters.

Attached is a draft of a tentative recommendation, which explains what needs to be done and why. For each amendment proposed in the draft, there is a note ("**Note.**") providing relevant background information. These notes would be included in the tentative recommendation to facilitate review.

The draft also includes a staff note ("**Staff Note.**") for each of the following proposed amendments:

- (1) Educ. Code § 49330.
- (2) Gov't Code § 53071.5.
- (3) Penal Code § 171c.
- (4) Penal Code § 171.7.
- (5) Penal Code § 11106.

These staff notes present issues for the Commission and interested persons to consider. The staff plans to raise these points for discussion at the upcoming meeting. We do not plan to include the staff notes in the actual tentative recommendation.

Commissioners and interested persons should review the attached draft and determine whether any other points warrant discussion. If so, please plan to raise the point(s) at the meeting, or provide written comments before the meeting.

The ultimate question for the Commission to resolve is whether to approve the attached draft as a tentative recommendation (with or without revisions), to

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

be posted to the Commission's website and circulated for comment. The staff strongly recommends that the Commission **(1) approve a tentative recommendation at the upcoming meeting, (2) set a short time period for submitting comments** (e.g., a comment deadline of January 21, 2011), **and (3) authorize the staff to seek preparation of a bill draft based on the tentative recommendation.** That will facilitate timely introduction and enactment of the necessary clean-up legislation.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation

December 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2010, the Legislature enacted legislation to reorganize the statutes governing control of deadly weapons in a user-friendly manner in a new Part 6 of the Penal Code, without changing their substantive effect. That legislation was recommended by the Law Revision Commission, and will become operative on January 1, 2012.

Before the statutory reorganization becomes operative, a clean-up bill should be enacted, to accomplish the following:

- Implement conforming revisions that were chaptered out by other bills.
- Effectuate minor statutory revisions that were chaptered out by the bill consisting of conforming revisions for the deadly weapons reorganization.
- Address certain deviations from the language recommended by the Commission.
- Conform a provision that was not included in last year's legislation because it required further study.
- Conform some new cross-references that were added to the codes in 2010.
- Make certain technical revisions requested by the Office of Legislative Counsel.

Enactment of such clean-up legislation will help to prevent confusion and ease the transition to the new statutory scheme.

This recommendation was prepared pursuant to Resolution Chapter 128 of the Statutes of 2006.

NONSUBSTANTIVE REORGANIZATION OF
DEADLY WEAPON STATUTES:
CLEAN-UP LEGISLATION

1 In 2006, the Legislature enacted a resolution directing the Law Revision
2 Commission to conduct a study and recommend means of simplifying and
3 reorganizing the statutes relating to control of deadly weapons, without changing
4 their substantive effect.¹ The Commission timely submitted its report on this
5 matter in mid-2009.²

6 Two bills to implement the Commission’s recommendation were enacted in
7 2010:

- 8 • Senate Bill 1080 (Committee on Public Safety),³ which contained the main
9 proposal reorganizing the deadly weapon statutes in a user-friendly manner
10 in a new Part 6 of the Penal Code.
- 11 • Senate Bill 1115 (Committee on Public Safety),⁴ which contained the
12 conforming revisions.⁵

13 Both bills have a delayed operative date of January 1, 2012, to give persons and
14 organizations time to adjust to the new statutory scheme before it takes effect.⁶

15 The delayed operative date also affords an opportunity to accomplish certain
16 statutory clean-up before the new statutory scheme takes effect. In particular, the
17 Commission recommends clean-up legislation to address the matters described
18 below.

19 **Conforming Revisions Chaptered Out by Other Bills**

20 When two bills would amend the same code section in different ways, the bills
21 conflict. If both bills are enacted in the same year, one of the amendments will
22 become law and the other will be “chaptered out” (i.e., nullified).⁷ This problem
23 can be avoided through carefully drafted bill coordination amendments, but
24 preparation of such amendments is complicated, time-consuming, and difficult

1. ACR 73 (McCarthy), 2006 Cal. Stat. res. ch. 128.

2. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009).

3. 2010 Cal. Stat. ch. 711.

4. 2010 Cal. Stat. ch. 178.

5. In other words, this bill amended numerous statutes that cross-referred to one or more of the deadly weapons provisions being relocated. The bill updated those cross-references to reflect the relocation.

6. See 2010 Cal. Stat. ch. 178, § 107; 2010 Cal. Stat. ch. 711, § 10.

7. See Gov’t Code § 9605.

1 when a bill affects numerous code sections and thus involves numerous bill
2 conflicts.⁸

3 In such a situation, another means of addressing the problem is to include a
4 subordination clause, which provides that if the bill conflicts with another bill, the
5 other bill will prevail.⁹ This type of approach is appropriate when the revisions
6 made by a bill are relatively minor, such as spelling or grammatical corrections,
7 conforming revisions, or other technical changes. The subordination clause
8 ensures that these minor revisions do not nullify more significant revisions made
9 by other bills. If a minor revision is chaptered out due to the subordination clause,
10 the problem can be corrected by reintroducing the minor revision in another bill
11 the following year.

12 That approach was taken in Senate Bill 1115, which contained the conforming
13 revisions for the nonsubstantive reorganization of the deadly weapon statutes.¹⁰
14 Due to the subordination clause in that bill, 15 of its 106 conforming revisions
15 were chaptered out by other bills.¹¹ Those conforming revisions should be
16 reintroduced this year, so that they are properly implemented before the
17 nonsubstantive reorganization becomes operative.¹²

8. See, e.g., SB 1080 (Committee on Public Safety), 2010 Cal. Stat. ch. 711, §§ 6.01-6.103, 8.01-8.103; SB 2139 (Lockyer), 1998 Cal. Stat. ch. 931, §§ 21.5, 53.5, 54.5, 62.5, 83.5, 143.5, 183.5, 201.5, 203.5, 227.5, 236.5, 315.5, 316.5, 365.5, 366.5, 388.5, 393.3, 393.4, 393.5, 395.5, 399.5, 405.5, 406.5, 424.5, 457.5, 481-506.

9. See, e.g., SB 1062 (Strickland), 2010 Cal. Stat. ch. 709, § 28; SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 108; SB 1330 (Committee on Judiciary), 2010 Cal. Stat. ch. 328, § 266.

10. See 2010 Cal. Stat. ch. 178, § 108.

11. The following amendments in Senate Bill 1115 were chaptered out:

- (1) Code Civ. Proc. § 527.6. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 1.
- (2) Code Civ. Proc. § 527.8. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 2.
- (3) Code Civ. Proc. § 527.85. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 4.
- (4) Code Civ. Proc. § 527.9. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 5.
- (5) Fam. Code § 6389. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 23.
- (6) Gov't Code § 6254. Chaptered out by AB 1887 (Villines), 2010 Cal. Stat. ch. 32, § 1.
- (7) Penal Code § 166. Chaptered out by AB 2632 (Davis), 2010 Cal. Stat. ch. 677, § 1.
- (8) Penal Code § 171c. Chaptered out by AB 2668 (Galgiani), 2010 Cal. Stat. ch. 689, §§ 1, 2.
- (9) Penal Code § 186.22 (as added by 2009 Cal. Stat. ch. 171, § 2). Chaptered out by AB 2263 (Yamada), 2010 Cal. Stat. ch. 256, § 2.
- (10) Penal Code § 629.52. Chaptered out by SB 1428 (Pavley), 2010 Cal. Stat. ch. 707, § 3.
- (11) Penal Code § 1203.4a. Chaptered out by AB 2582 (Adams), 2010 Cal. Stat. ch. 99, § 1.
- (12) Penal Code § 2962. Chaptered out by AB 1844 (Fletcher), 2010 Cal. Stat. ch. 219, § 18.
- (13) Penal Code § 11105. Chaptered out by SB 1417 (Cox), 2010 Cal. Stat. ch. 652, § 13.
- (14) Welf. & Inst. Code § 8103. Chaptered out by AB 302 (Beall), 2010 Cal. Stat. ch. 344, § 1.
- (15) Welf. & Inst. Code § 15657.03. Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 26.

12. See the proposed amendments to the following provisions *infra*: Code Civ. Proc. §§ 527.6, 527.8, 527.85, 527.9; Fam. Code § 6389; Gov't Code § 6254; Penal Code §§ 166, 171c, 186.22, 629.52, 1203.4a, 2962, 11105; Welf. & Inst. Code §§ 8103, 15657.03.

1 **Minor Revisions Chaptered Out by Senate Bill 1115**

2 Senate Bill 1115 conflicted with two bills that also contained a subordination
3 clause. As a result, three statutory revisions made by those other bills were
4 chaptered out, because the subordination clause in Senate Bill 1115 was not as
5 comprehensive as the subordination clauses in those bills.¹³ Those statutory
6 revisions should be reintroduced, so that the Legislature's intent in enacting them
7 can be effectuated.¹⁴

8 **Conforming Revisions That Were Not Incorporated Into Senate Bill 1115 in the Manner**
9 **Recommended by the Commission**

10 A few of the conforming revisions recommended by the Commission were not
11 incorporated into Senate Bill 1115 in precisely the manner recommended. To
12 avoid the expense of amending such a lengthy bill, these problems were not
13 addressed in the legislative process. They should be fixed before the
14 nonsubstantive reorganization becomes operative.¹⁵

15 **Conforming Revision That Was Not Included in the Commission's Report Because It**
16 **Required Further Study**

17 The Commission did not include a conforming revision of Education Code
18 Section 49330 in its report, because the proper manner of conforming that
19 provision was complicated. Instead, the Commission noted the matter for further
20 study.¹⁶

21 Having since studied the matter more closely, the Commission has drawn
22 conclusions about how the provision should be amended.¹⁷ To prevent confusion,
23 this amendment should be made before the nonsubstantive reorganization becomes
24 operative.

25 **Conforming Revisions to Adjust Cross-References That Were Added to the Codes in 2010**

26 In 2010, some cross-references to deadly weapons material being reorganized
27 were added to the codes.¹⁸ Those cross-references need to be adjusted to reflect the

13. Compare 2010 Cal. Stat. ch. 178, § 108, with 2010 Cal. Stat. ch. 709, § 28, and 2010 Cal. Stat. ch. 328, § 266.

14. See the proposed amendments to Penal Code §§ 273.6, 626.10, and 1203.4 *infra*.

15. See the proposed amendments to Gov't Code § 53071.5 and Penal Code §§ 626.95, 2933.5, 11105.03, and 11106 *infra*. The proposed amendment to Penal Code Section 11106 is not identical to the one originally recommended by the Commission. Instead, it includes additional revisions to improve the readability of the statute.

16. See *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217, 280 (Item # 96) (2009); see also Commission Staff Memorandum 2009-28, pp. 2-4.

17. See the proposed amendment to Educ. Code § 49330 *infra*.

18. See Penal Code Section 171c, 2010 Cal. Stat. ch. 689, § 2, which cross-refers to Penal Code Sections 653k, 12020, 12021, 12021.1, 12027(a), and 12316, and to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code. See also Penal Code Section 171.7, 2010 Cal.

1 reorganization. The Commission has prepared the necessary conforming revisions,
2 which should be enacted before the reorganization becomes operative.¹⁹

3 **Technical Revisions Requested by the Office of Legislative Counsel**

4 While the bills to implement the deadly weapons reorganization were pending,
5 the Office of Legislative Counsel requested permission to make certain technical
6 revisions. Permission to make a few of those revisions was withheld on the ground
7 that it would be preferable to address the matter in a clean-up bill than to include it
8 in the reorganization proposal without first providing ample opportunity for input
9 on the point. Now that the reorganization proposal has been enacted, those
10 technical revisions should be made, along with the other clean-up revisions
11 recommended above.²⁰

Stat. ch. 675, § 1, which cross-refers to Penal Code Sections 12001, 12001.1, 12025, 12027(a), and 12027, and to Chapter 4 (commencing with Section 12401) of Title 2 of Part 4 of the Penal Code.

19. See the proposed amendments to Penal Code §§ 171c and 171.7 *infra*.

20. See the proposed amendments to Penal Code §§ 12003, 23505, 25105, and 29510 *infra*.

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PROPOSED LEGISLATION

1 **Code Civ. Proc. § 527.6 (amended). Temporary restraining order and injunction**
2 **prohibiting harassment**

3 SEC. _____. Section 527.6 of the Code of Civil Procedure is amended to read:

4 527.6. (a)(1) A person who has suffered harassment as defined in subdivision (b)
5 may seek a temporary restraining order and an injunction prohibiting harassment
6 as provided in this section.

7 (2) A minor, under 12 years of age, accompanied by a duly appointed and acting
8 guardian ad litem, shall be permitted to appear in court without counsel for the
9 limited purpose of requesting or opposing a request for a temporary restraining
10 order or injunction, or both, under this section as provided in Section 374.

11 (b) For the purposes of this section:

12 (1) “Course of conduct” is a pattern of conduct composed of a series of acts over
13 a period of time, however short, evidencing a continuity of purpose, including
14 following or stalking an individual, making harassing telephone calls to an
15 individual, or sending harassing correspondence to an individual by any means,
16 including, but not limited to, the use of public or private mails, interoffice mail,
17 fax, or computer e-mail. Constitutionally protected activity is not included within
18 the meaning of “course of conduct.”

19 (2) “Credible threat of violence” is a knowing and willful statement or course of
20 conduct that would place a reasonable person in fear for his or her safety, or the
21 safety of his or her immediate family, and that serves no legitimate purpose.

22 (3) “Harassment” is unlawful violence, a credible threat of violence, or a
23 knowing and willful course of conduct directed at a specific person that seriously
24 alarms, annoys, or harasses the person, and that serves no legitimate purpose. The
25 course of conduct must be such as would cause a reasonable person to suffer
26 substantial emotional distress, and must actually cause substantial emotional
27 distress to the petitioner.

28 (4) “Petitioner” means the person to be protected by the temporary restraining
29 order and injunction and, if the court grants the petition, the protected person.

30 (5) “Respondent” means the person against whom the temporary restraining
31 order and injunction are sought and, if the petition is granted, the restrained
32 person.

33 (6) “Temporary restraining order” and “injunction” mean orders that include any
34 of the following restraining orders, whether issued ex parte or after notice and
35 hearing:

36 (A) An order enjoining a party from harassing, intimidating, molesting,
37 attacking, striking, stalking, threatening, sexually assaulting, battering, abusing,
38 telephoning, including, but not limited to, making annoying telephone calls, as
39 described in Section 653m of the Penal Code, destroying personal property,

1 contacting, either directly or indirectly, by mail or otherwise, or coming within a
2 specified distance of, or disturbing the peace of the petitioner.

3 (B) An order enjoining a party from specified behavior that the court determines
4 is necessary to effectuate orders described in subparagraph (A).

5 (7) “Unlawful violence” is any assault or battery, or stalking as prohibited in
6 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
7 or defense of others.

8 (c) In the discretion of the court, on a showing of good cause, a temporary
9 restraining order or injunction issued under this section may include other named
10 family or household members.

11 (d) Upon filing a petition for an injunction under this section, the petitioner may
12 obtain a temporary restraining order in accordance with Section 527, except to the
13 extent this section provides a rule that is inconsistent. The temporary restraining
14 order may include any of the restraining orders described in paragraph (6) of
15 subdivision (b). A temporary restraining order may be issued with or without
16 notice, based on a declaration that, to the satisfaction of the court, shows
17 reasonable proof of harassment of the petitioner by the respondent, and that great
18 or irreparable harm would result to the petitioner.

19 (e) A request for the issuance of a temporary restraining order without notice
20 under this section shall be granted or denied on the same day that the petition is
21 submitted to the court, unless the petition is filed too late in the day to permit
22 effective review, in which case the order shall be granted or denied on the next day
23 of judicial business in sufficient time for the order to be filed that day with the
24 clerk of the court.

25 (f) A temporary restraining order issued under this section shall remain in effect,
26 at the court’s discretion, for a period not to exceed 21 days, or, if the court extends
27 the time for hearing under subdivision (g), not to exceed 25 days, unless otherwise
28 modified or terminated by the court.

29 (g) Within 21 days, or, if good cause appears to the court, 25 days from the date
30 that a petition for a temporary order is granted or denied, a hearing shall be held
31 on the petition for the injunction. If no request for temporary orders is made, the
32 hearing shall be held within 21 days, or, if good cause appears to the court, 25
33 days, from the date that the petition is filed.

34 (h) The respondent may file a response that explains, excuses, justifies, or denies
35 the alleged harassment or may file a cross-petition under this section.

36 (i) At the hearing, the judge shall receive any testimony that is relevant, and may
37 make an independent inquiry. If the judge finds by clear and convincing evidence
38 that unlawful harassment exists, an injunction shall issue prohibiting the
39 harassment.

40 (j)(1) In the discretion of the court, an order issued after notice and hearing
41 under this section may have a duration of not more than three years, subject to
42 termination or modification by further order of the court either on written
43 stipulation filed with the court or on the motion of a party. These orders may be

1 renewed, upon the request of a party, for a duration of not more than three years,
2 without a showing of any further harassment since the issuance of the original
3 order, subject to termination or modification by further order of the court either on
4 written stipulation filed with the court or on the motion of a party. The request for
5 renewal may be brought at any time within the three months before the expiration
6 of the order.

7 (2) The failure to state the expiration date on the face of the form creates an
8 order with a duration of three years from the date of issuance.

9 (k) This section does not preclude either party from representation by private
10 counsel or from appearing on the party's own behalf.

11 (l) In a proceeding under this section if there are allegations of unlawful
12 violence or credible threats of violence, a support person may accompany a party
13 in court and, if the party is not represented by an attorney, may sit with the party at
14 the table that is generally reserved for the party and the party's attorney. The
15 support person is present to provide moral and emotional support for a person who
16 alleges he or she is a victim of violence. The support person is not present as a
17 legal adviser and may not provide legal advice. The support person may assist the
18 person who alleges he or she is a victim of violence in feeling more confident that
19 he or she will not be injured or threatened by the other party during the
20 proceedings if the person who alleges he or she is a victim of violence and the
21 other party are required to be present in close proximity. This subdivision does not
22 preclude the court from exercising its discretion to remove the support person
23 from the courtroom if the court believes the support person is prompting, swaying,
24 or influencing the party assisted by the support person.

25 (m) Upon the filing of a petition for an injunction under this section, the
26 respondent shall be personally served with a copy of the petition, temporary
27 restraining order, if any, and notice of hearing of the petition. Service shall be
28 made at least five days before the hearing. The court may for good cause, on
29 motion of the petitioner or on its own motion, shorten the time for service on the
30 respondent.

31 (n) A notice of hearing under this section shall notify the respondent that if he or
32 she does not attend the hearing, the court may make orders against him or her that
33 could last up to three years.

34 (o)(1) The court may, upon the filing of a declaration by the petitioner that the
35 respondent could not be served within the time required by statute, reissue an
36 order previously issued and dissolved by the court for failure to serve the
37 respondent. The reissued order shall remain in effect until the date set for the
38 hearing.

39 (2) The reissued order shall state on its face the date of expiration of the order.

40 (p)(1) If a respondent, named in a restraining order issued after a hearing, has
41 not been served personally with the order but has received actual notice of the
42 existence and substance of the order through personal appearance in court to hear

1 the terms of the order from the court, no additional proof of service is required for
2 enforcement of the order.

3 (2) If the respondent named in a temporary restraining order is personally served
4 with the order and notice of hearing with respect to a restraining order or
5 protective order based on the temporary restraining order, but the respondent does
6 not appear at the hearing, either personally or by an attorney, and the terms and
7 conditions of the restraining order or protective order issued at the hearing are
8 identical to the temporary restraining order, except for the duration of the order,
9 then the restraining order or protective order issued at the hearing may be served
10 on the respondent by first-class mail sent to the respondent at the most current
11 address for the respondent available to the court.

12 (3) The Judicial Council form for temporary orders issued pursuant to this
13 subdivision shall contain a statement in substantially the following form:

14 “If you have been personally served with this temporary restraining order and
15 notice of hearing, but you do not appear at the hearing either in person or by a
16 lawyer, and a restraining order that is the same as this temporary restraining order
17 except for the expiration date is issued at the hearing, a copy of the restraining
18 order will be served on you by mail at the following address: ____.

19 If that address is not correct or you wish to verify that the temporary restraining
20 order was converted to a restraining order at the hearing without substantive
21 change and to find out the duration of that order, contact the clerk of the court.”

22 (q)(1) Information on any temporary restraining order or injunction relating to
23 civil harassment issued by a court pursuant to this section shall be transmitted to
24 the Department of Justice in accordance with either paragraph (2) or (3).

25 (2) The court shall order the petitioner or the attorney for the petitioner to
26 deliver a copy of an order issued under this section, or reissuance, extension,
27 modification, or termination of the order, and any subsequent proof of service, by
28 the close of the business day on which the order, reissuance, extension,
29 modification, or termination was made, to a law enforcement agency having
30 jurisdiction over the residence of the petitioner and to any additional law
31 enforcement agencies within the court’s discretion as are requested by the
32 petitioner.

33 (3) Alternatively, the court or its designee shall transmit, within one business
34 day, to law enforcement personnel all information required under subdivision (b)
35 of Section 6380 of the Family Code regarding any order issued under this section,
36 or a reissuance, extension, modification, or termination of the order, and any
37 subsequent proof of service, by either one of the following methods:

38 (A) Transmitting a physical copy of the order or proof of service to a local law
39 enforcement agency authorized by the Department of Justice to enter orders into
40 the California Law Enforcement Telecommunications System (CLETS).

41 (B) With the approval of the Department of Justice, entering the order or proof
42 of service into CLETS directly.

1 (4) Each appropriate law enforcement agency shall make available information
2 as to the existence and current status of these orders to law enforcement officers
3 responding to the scene of reported harassment.

4 (5) An order issued under this section shall, on request of the petitioner, be
5 served on the respondent, whether or not the respondent has been taken into
6 custody, by any law enforcement officer who is present at the scene of reported
7 harassment involving the parties to the proceeding. The petitioner shall provide the
8 officer with an endorsed copy of the order and a proof of service that the officer
9 shall complete and send to the issuing court.

10 (6) Upon receiving information at the scene of an incident of harassment that a
11 protective order has been issued under this section, or that a person who has been
12 taken into custody is the subject of an order, if the protected person cannot
13 produce a certified copy of the order, a law enforcement officer shall immediately
14 attempt to verify the existence of the order.

15 (7) If the law enforcement officer determines that a protective order has been
16 issued, but not served, the officer shall immediately notify the respondent of the
17 terms of the order and shall at that time also enforce the order. Verbal notice of the
18 terms of the order shall constitute service of the order and is sufficient notice for
19 the purposes of this section and for the purposes of ~~Section~~ Sections 273.6 and
20 ~~subdivision (g) of Section 12021 29825~~ of the Penal Code.

21 (r) The prevailing party in any action brought under this section may be awarded
22 court costs and attorney's fees, if any.

23 (s) Any willful disobedience of any temporary restraining order or injunction
24 granted under this section is punishable pursuant to Section 273.6 of the Penal
25 Code.

26 (t)(1) A person subject to a protective order issued under this section shall not
27 own, possess, purchase, receive, or attempt to purchase or receive a firearm or
28 ammunition while the protective order is in effect.

29 (2) The court shall order a person subject to a protective order issued under this
30 section to relinquish any firearms he or she owns or possesses pursuant to Section
31 527.9.

32 (3) Every person who owns, possesses, purchases or receives, or attempts to
33 purchase or receive a firearm or ammunition while the protective order is in effect
34 is punishable pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the
35 Penal Code.

36 (u) This section does not apply to any action or proceeding covered by Title
37 1.6C (commencing with Section 1788) of the Civil Code or by Division 10
38 (commencing with Section 6200) of the Family Code. This section does not
39 preclude a petitioner from using other existing civil remedies.

40 (v)(1) The Judicial Council shall develop forms, instructions, and rules relating
41 to matters governed by this section. The petition and response forms shall be
42 simple and concise, and their use by parties in actions brought pursuant to this
43 section shall be mandatory.

1 (2) A temporary restraining order or injunction relating to civil harassment
2 issued by a court pursuant to this section shall be issued on forms adopted by the
3 Judicial Council of California and that have been approved by the Department of
4 Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However,
5 the fact that an order issued by a court pursuant to this section was not issued on
6 forms adopted by the Judicial Council and approved by the Department of Justice
7 shall not, in and of itself, make the order unenforceable.

8 (w) There is no filing fee for a petition that alleges that a person has inflicted or
9 threatened violence against the petitioner, or stalked the petitioner, or acted or
10 spoken in any other manner that has placed the petitioner in reasonable fear of
11 violence, and that seeks a protective or restraining order or injunction restraining
12 stalking or future violence or threats of violence, in any action brought pursuant to
13 this section. No fee shall be paid for a subpoena filed in connection with a petition
14 alleging these acts. No fee shall be paid for filing a response to a petition alleging
15 these acts.

16 (x)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
17 Government Code, there shall be no fee for the service of process by a sheriff or
18 marshal of a protective order, restraining order, or injunction to be issued, if either
19 of the following conditions apply:

20 (A) The protective order, restraining order, or injunction issued pursuant to this
21 section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

22 (B) The protective order, restraining order, or injunction issued pursuant to this
23 section is based upon unlawful violence or a credible threat of violence.

24 (2) The Judicial Council shall prepare and develop forms for persons who wish
25 to avail themselves of the services described in this subdivision.

26 **Comment.** Paragraphs (q)(7) and (t)(3) of Section 527.6 are amended to reflect nonsubstantive
27 reorganization of the statutes governing control of deadly weapons.

28 **Note.** A similar amendment of Section 527.6 was recommended by the Commission in
29 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
30 217, 1037-43 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 20. That amendment did not
31 become law, because it was chaptered out by another amendment of the same section. See AB
32 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 1; see also Gov't Code § 9605 (specifying how to
33 resolve conflict between two bills that amend same section).

34 **Code Civ. Proc. § 527.8 (amended). Temporary restraining order and injunction on behalf**
35 **of employee**

36 SEC. _____. Section 527.8 of the Code of Civil Procedure is amended to read:

37 527.8. (a) Any employer, whose employee has suffered unlawful violence or a
38 credible threat of violence from any individual, that can reasonably be construed
39 to be carried out or to have been carried out at the workplace, may seek a
40 temporary restraining order and an injunction on behalf of the employee and, at
41 the discretion of the court, any number of other employees at the workplace, and,
42 if appropriate, other employees at other workplaces of the employer.

43 (b) For the purposes of this section:

1 (1) “Course of conduct” is a pattern of conduct composed of a series of acts over
2 a period of time, however short, evidencing a continuity of purpose, including
3 following or stalking an employee to or from the place of work; entering the
4 workplace; following an employee during hours of employment; making
5 telephone calls to an employee; or sending correspondence to an employee by any
6 means, including, but not limited to, the use of the public or private mails,
7 interoffice mail, fax, or computer e-mail.

8 (2) “Credible threat of violence” is a knowing and willful statement or course of
9 conduct that would place a reasonable person in fear for his or her safety, or the
10 safety of his or her immediate family, and that serves no legitimate purpose.

11 (3) “Employer” and “employee” mean persons defined in Section 350 of the
12 Labor Code. “Employer” also includes a federal agency, the state, a state agency, a
13 city, county, or district, and a private, public, or quasi-public corporation, or any
14 public agency thereof or therein. “Employee” also includes the members of boards
15 of directors of private, public, and quasi-public corporations and elected and
16 appointed public officers. For purposes of this section only, “employee” also
17 includes a volunteer or independent contractor who performs services for the
18 employer at the employer’s worksite.

19 (4) “Petitioner” means the employer that petitions under subdivision (a) for a
20 temporary restraining order and injunction.

21 (5) “Respondent” means the person against whom the temporary restraining
22 order and injunction are sought and, if the petition is granted, the restrained
23 person.

24 (6) “Temporary restraining order” and “injunction” mean orders that include any
25 of the following restraining orders, whether issued ex parte or after notice and
26 hearing:

27 (A) An order enjoining a party from harassing, intimidating, molesting,
28 attacking, striking, stalking, threatening, sexually assaulting, battering, abusing,
29 telephoning, including, but not limited to, making annoying telephone calls as
30 described in Section 653m of the Penal Code, destroying personal property,
31 contacting, either directly or indirectly, by mail or otherwise, or coming within a
32 specified distance of, or disturbing the peace of the employee.

33 (B) An order enjoining a party from specified behavior that the court determines
34 is necessary to effectuate orders described in subparagraph (A).

35 (7) “Unlawful violence” is any assault or battery, or stalking as prohibited in
36 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
37 or defense of others.

38 (c) This section does not permit a court to issue a temporary restraining order or
39 injunction prohibiting speech or other activities that are constitutionally protected,
40 or otherwise protected by Section 527.3 or any other provision of law.

41 (d) In the discretion of the court, on a showing of good cause, a temporary
42 restraining order or injunction issued under this section may include other named

1 family or household members, or other persons employed at the employee's
2 workplace or workplaces.

3 (e) Upon filing a petition for an injunction under this section, the petitioner may
4 obtain a temporary restraining order in accordance with subdivision (a) of Section
5 527, if the petitioner also files a declaration that, to the satisfaction of the court,
6 shows reasonable proof that an employee has suffered unlawful violence or a
7 credible threat of violence by the respondent, and that great or irreparable harm
8 would result to an employee. The temporary restraining order may include any of
9 the protective orders described in paragraph (6) of subdivision (b).

10 (f) A request for the issuance of a temporary restraining order without notice
11 under this section shall be granted or denied on the same day that the petition is
12 submitted to the court, unless the petition is filed too late in the day to permit
13 effective review, in which case the order shall be granted or denied on the next day
14 of judicial business in sufficient time for the order to be filed that day with the
15 clerk of the court.

16 (g) A temporary restraining order granted under this section shall remain in
17 effect, at the court's discretion, for a period not to exceed 21 days, or if the court
18 extends the time for hearing under subdivision (h), not to exceed 25 days, unless
19 otherwise modified or terminated by the court.

20 (h) Within 21 days, or if good cause appears to the court, 25 days from the date
21 that a petition for a temporary order is granted or denied, a hearing shall be held
22 on the petition for the injunction. If no request for temporary orders is made, the
23 hearing shall be held within 21 days, or, if good cause appears to the court, 25
24 days, from the date that the petition is filed.

25 (i) The respondent may file a response that explains, excuses, justifies, or denies
26 the alleged unlawful violence or credible threats of violence.

27 (j) At the hearing, the judge shall receive any testimony that is relevant and may
28 make an independent inquiry. Moreover, if the respondent is a current employee of
29 the entity requesting the injunction, the judge shall receive evidence concerning
30 the employer's decision to retain, terminate, or otherwise discipline the
31 respondent. If the judge finds by clear and convincing evidence that the
32 respondent engaged in unlawful violence or made a credible threat of violence, an
33 injunction shall issue prohibiting further unlawful violence or threats of violence.

34 (k)(1) In the discretion of the court, an order issued after notice and hearing
35 under this section may have a duration of not more than three years, subject to
36 termination or modification by further order of the court either on written
37 stipulation filed with the court or on the motion of a party. These orders may be
38 renewed, upon the request of a party, for a duration of not more than three years,
39 without a showing of any further violence or threats of violence since the issuance
40 of the original order, subject to termination or modification by further order of the
41 court either on written stipulation filed with the court or on the motion of a party.
42 The request for renewal may be brought at any time within the three months
43 before the expiration of the order.

1 (2) The failure to state the expiration date on the face of the form creates an
2 order with a duration of three years from the date of issuance.

3 (l) This section does not preclude either party from representation by private
4 counsel or from appearing on his or her own behalf.

5 (m) Upon filing of a petition for an injunction under this section, the respondent
6 shall be personally served with a copy of the petition, temporary restraining order,
7 if any, and notice of hearing of the petition. Service shall be made at least five
8 days before the hearing. The court may, for good cause, on motion of the
9 petitioner or on its own motion, shorten the time for service on the respondent.

10 (n) A notice of hearing under this section shall notify the respondent that, if he
11 or she does not attend the hearing, the court may make orders against him or her
12 that could last up to three years.

13 (o)(1) The court may, upon the filing of a declaration by the petitioner that the
14 respondent could not be served within the time required by statute, reissue an
15 order previously issued and dissolved by the court for failure to serve the
16 respondent. The reissued order shall remain in effect until the date set for the
17 hearing.

18 (2) The reissued order shall state on its face the date of expiration of the order.

19 (p)(1) If a respondent, named in a restraining order issued under this section
20 after a hearing, has not been served personally with the order but has received
21 actual notice of the existence and substance of the order through personal
22 appearance in court to hear the terms of the order from the court, no additional
23 proof of service is required for enforcement of the order.

24 (2) If the respondent named in a temporary restraining order is personally served
25 with the order and notice of hearing with respect to a restraining order or
26 protective order based on the temporary restraining order, but the person does not
27 appear at the hearing, either personally or by an attorney, and the terms and
28 conditions of the restraining order or protective order issued at the hearing are
29 identical to the temporary restraining order, except for the duration of the order,
30 then the restraining order or protective order issued at the hearing may be served
31 on the person by first-class mail sent to that person at the most current address for
32 the person available to the court.

33 (3) The Judicial Council form for temporary orders issued pursuant to this
34 subdivision shall contain a statement in substantially the following form:

35 “If you have been personally served with this temporary restraining order and
36 notice of hearing, but you do not appear at the hearing either in person or by a
37 lawyer, and a restraining order that is the same as this restraining order except for
38 the expiration date is issued at the hearing, a copy of the order will be served on
39 you by mail at the following address: _____.

40 If that address is not correct or you wish to verify that the temporary restraining
41 order was converted to a restraining order at the hearing without substantive
42 change and to find out the duration of that order, contact the clerk of the court.”

1 (q)(1) Information on any temporary restraining order or injunction relating to
2 workplace violence issued by a court pursuant to this section shall be transmitted
3 to the Department of Justice in accordance with either paragraph (2) or (3).

4 (2) The court shall order the petitioner or the attorney for the petitioner to
5 deliver a copy of any order issued under this section, or a reissuance, extension,
6 modification, or termination of the order, and any subsequent proof of service, by
7 the close of the business day on which the order, reissuance, extension,
8 modification, or termination was made, to each law enforcement agency having
9 jurisdiction over the residence of the petitioner and to any additional law
10 enforcement agencies within the court's discretion as are requested by the
11 petitioner.

12 (3) Alternatively, the court or its designee shall transmit, within one business
13 day, to law enforcement personnel all information required under subdivision (b)
14 of Section 6380 of the Family Code regarding any order issued under this section,
15 or a reissuance, extension, modification, or termination of the order, and any
16 subsequent proof of service, by either one of the following methods:

17 (A) Transmitting a physical copy of the order or proof of service to a local law
18 enforcement agency authorized by the Department of Justice to enter orders into
19 the California Law Enforcement Telecommunications System (CLETS).

20 (B) With the approval of the Department of Justice, entering the order or proof
21 of service into CLETS directly.

22 (4) Each appropriate law enforcement agency shall make available information
23 as to the existence and current status of these orders to law enforcement officers
24 responding to the scene of reported unlawful violence or a credible threat of
25 violence.

26 (5) At the request of the petitioner, an order issued under this section shall be
27 served on the respondent, regardless of whether the respondent has been taken into
28 custody, by any law enforcement officer who is present at the scene of reported
29 unlawful violence or a credible threat of violence involving the parties to the
30 proceedings. The petitioner shall provide the officer with an endorsed copy of the
31 order and proof of service that the officer shall complete and send to the issuing
32 court.

33 (6) Upon receiving information at the scene of an incident of unlawful violence
34 or a credible threat of violence that a protective order has been issued under this
35 section, or that a person who has been taken into custody is the subject of an order,
36 if the petitioner or the protected person cannot produce an endorsed copy of the
37 order, a law enforcement officer shall immediately attempt to verify the existence
38 of the order.

39 (7) If the law enforcement officer determines that a protective order has been
40 issued, but not served, the officer shall immediately notify the respondent of the
41 terms of the order and obtain the respondent's address. The law enforcement
42 officer shall at that time also enforce the order, but may not arrest or take the
43 respondent into custody for acts in violation of the order that were committed prior

1 to the verbal notice of the terms and conditions of the order. The law enforcement
2 officer's verbal notice of the terms of the order shall constitute service of the order
3 and constitutes sufficient notice for the purposes of this section and for the
4 purposes of ~~Section~~ Sections 273.6 and subdivision (g) of Section 12021 29825 of
5 the Penal Code. The petitioner shall mail an endorsed copy of the order to the
6 respondent's mailing address provided to the law enforcement officer within one
7 business day of the reported incident of unlawful violence or a credible threat of
8 violence at which a verbal notice of the terms of the order was provided by a law
9 enforcement officer.

10 (r)(1) A person subject to a protective order issued under this section shall not
11 own, possess, purchase, receive, or attempt to purchase or receive a firearm or
12 ammunition while the protective order is in effect.

13 (2) The court shall order a person subject to a protective order issued under this
14 section to relinquish any firearms he or she owns or possesses pursuant to Section
15 527.9.

16 (3) Every person who owns, possesses, purchases or receives, or attempts to
17 purchase or receive a firearm or ammunition while the protective order is in effect
18 is punishable pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the
19 Penal Code.

20 (s) Any intentional disobedience of any temporary restraining order or
21 injunction granted under this section is punishable pursuant to Section 273.6 of the
22 Penal Code.

23 (t) Nothing in this section may be construed as expanding, diminishing, altering,
24 or modifying the duty, if any, of an employer to provide a safe workplace for
25 employees and other persons.

26 (u)(1) The Judicial Council shall develop forms, instructions, and rules for
27 relating to matters governed by this section. The forms for the petition and
28 response shall be simple and concise, and their use by parties in actions brought
29 pursuant to this section shall be mandatory.

30 (2) A temporary restraining order or injunction relating to unlawful violence or a
31 credible threat of violence issued by a court pursuant to this section shall be issued
32 on forms adopted by the Judicial Council of California and that have been
33 approved by the Department of Justice pursuant to subdivision (i) of Section 6380
34 of the Family Code. However, the fact that an order issued by a court pursuant to
35 this section was not issued on forms adopted by the Judicial Council and approved
36 by the Department of Justice shall not, in and of itself, make the order
37 unenforceable.

38 (v) There is no filing fee for a petition that alleges that a person has inflicted or
39 threatened violence against an employee of the petitioner, or stalked the employee,
40 or acted or spoken in any other manner that has placed the employee in reasonable
41 fear of violence, and that seeks a protective or restraining order or injunction
42 restraining stalking or future violence or threats of violence, in any action brought
43 pursuant to this section. No fee shall be paid for a subpoena filed in connection

1 with a petition alleging these acts. No fee shall be paid for filing a response to a
2 petition alleging these acts.

3 (w)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
4 Government Code, there shall be no fee for the service of process by a sheriff or
5 marshal of a temporary restraining order or injunction to be issued pursuant to this
6 section if either of the following conditions apply:

7 (A) The temporary restraining order or injunction issued pursuant to this section
8 is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

9 (B) The temporary restraining order or injunction issued pursuant to this section
10 is based on unlawful violence or a credible threat of violence.

11 (2) The Judicial Council shall prepare and develop forms for persons who wish
12 to avail themselves of the services described in this subdivision.

13 **Comment.** Paragraphs (q)(7) and (r)(3) of Section 527.8 are amended to reflect nonsubstantive
14 reorganization of the statutes governing control of deadly weapons.

15 **Note.** A similar amendment of Section 527.8 was recommended by the Commission in
16 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
17 217, 1043-49 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 21. That amendment did not
18 become law, because it was chaptered out by another amendment of the same section. See AB
19 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 2; see also Gov't Code § 9605 (specifying how to
20 resolve conflict between two bills that amend same section).

21 **Code Civ. Proc. § 527.85 (amended). Temporary restraining order and injunction on behalf**
22 **of student at postsecondary educational institution**

23 SEC. _____. Section 527.85 of the Code of Civil Procedure is amended to read:

24 527.85. (a) Any chief administrative officer of a postsecondary educational
25 institution, or an officer or employee designated by the chief administrative officer
26 to maintain order on the school campus or facility, a student of which has suffered
27 a credible threat of violence made off the school campus or facility from any
28 individual, which can reasonably be construed to be carried out or to have been
29 carried out at the school campus or facility, may, with the written consent of the
30 student, seek a temporary restraining order and an injunction, on behalf of the
31 student and, at the discretion of the court, any number of other students at the
32 campus or facility who are similarly situated.

33 (b) For the purposes of this section, the following definitions shall apply:

34 (1) "Chief administrative officer" means the principal, president, or highest
35 ranking official of the postsecondary educational institution.

36 (2) "Course of conduct" means a pattern of conduct composed of a series of acts
37 over a period of time, however short, evidencing a continuity of purpose,
38 including any of the following:

39 (A) Following or stalking a student to or from school.

40 (B) Entering the school campus or facility.

41 (C) Following a student during school hours.

42 (D) Making telephone calls to a student.

1 (E) Sending correspondence to a student by any means, including, but not
2 limited to, the use of the public or private mails, interoffice mail, fax, or computer
3 e-mail.

4 (3) “Credible threat of violence” means a knowing and willful statement or
5 course of conduct that would place a reasonable person in fear for his or her
6 safety, or the safety of his or her immediate family, and that serves no legitimate
7 purpose.

8 (4) “Petitioner” means the chief administrative officer, or his or her designee,
9 who petitions under subdivision (a) for a temporary restraining order and
10 injunction.

11 (5) “Postsecondary educational institution” means a private institution of
12 vocational, professional, or postsecondary education.

13 (6) “Respondent” means the person against whom the temporary restraining
14 order and injunction are sought and, if the petition is granted, the restrained
15 person.

16 (7) “Student” means an adult currently enrolled in or applying for admission to a
17 postsecondary educational institution.

18 (8) “Temporary restraining order” and “injunction” mean orders that include any
19 of the following restraining orders, whether issued ex parte, or after notice and
20 hearing:

21 (A) An order enjoining a party from harassing, intimidating, molesting,
22 attacking, striking, stalking, threatening, sexually assaulting, battering, abusing,
23 telephoning, including, but not limited to, making annoying telephone calls as
24 described in Section 653m of the Penal Code, destroying personal property,
25 contacting, either directly or indirectly, by mail or otherwise, or coming within a
26 specified distance of, or disturbing the peace of the student.

27 (B) An order enjoining a party from specified behavior that the court determines
28 is necessary to effectuate orders described in subparagraph (A).

29 (9) “Unlawful violence” means any assault or battery, or stalking as prohibited
30 in Section 646.9 of the Penal Code, but shall not include lawful acts of self-
31 defense or defense of others.

32 (c) This section does not permit a court to issue a temporary restraining order or
33 injunction prohibiting speech or other activities that are constitutionally protected,
34 or otherwise protected by Section 527.3 or any other provision of law.

35 (d) In the discretion of the court, on a showing of good cause, a temporary
36 restraining order or injunction issued under this section may include other named
37 family or household members of the student, or other students at the campus or
38 facility.

39 (e) Upon filing a petition for an injunction under this section, the petitioner may
40 obtain a temporary restraining order in accordance with subdivision (a) of Section
41 527, if the petitioner also files a declaration that, to the satisfaction of the court,
42 shows reasonable proof that a student has suffered a credible threat of violence
43 made off the school campus or facility by the respondent, and that great or

1 irreparable harm would result to the student. The temporary restraining order may
2 include any of the protective orders described in paragraph (8) of subdivision (b).

3 (f) A request for the issuance of a temporary restraining order without notice
4 under this section shall be granted or denied on the same day that the petition is
5 submitted to the court, unless the petition is filed too late in the day to permit
6 effective review, in which case the order shall be granted or denied on the next day
7 of judicial business in sufficient time for the order to be filed that day with the
8 clerk of the court.

9 (g) A temporary restraining order granted under this section shall remain in
10 effect, at the court's discretion, for a period not to exceed 21 days, or if the court
11 extends the time for hearing under subdivision (h), not to exceed 25 days, unless
12 otherwise modified or terminated by the court.

13 (h) Within 21 days, or if good cause appears to the court, within 25 days, from
14 the date that a petition for a temporary order is granted or denied, a hearing shall
15 be held on the petition for the injunction. If no request for temporary orders is
16 made, the hearing shall be held within 21 days, or if good cause appears to the
17 court, 25 days, from the date the petition is filed.

18 (i) The respondent may file a response that explains, excuses, justifies, or denies
19 the alleged credible threats of violence.

20 (j) At the hearing, the judge shall receive any testimony that is relevant and may
21 make an independent inquiry. Moreover, if the respondent is a current student of
22 the entity requesting the injunction, the judge shall receive evidence concerning
23 the decision of the postsecondary educational institution decision to retain,
24 terminate, or otherwise discipline the respondent. If the judge finds by clear and
25 convincing evidence that the respondent made a credible threat of violence off the
26 school campus or facility, an injunction shall be issued prohibiting further threats
27 of violence.

28 (k)(1) In the discretion of the court, an order issued after notice and hearing
29 under this section may have a duration of not more than three years, subject to
30 termination or modification by further order of the court either on written
31 stipulation filed with the court or on the motion of a party. These orders may be
32 renewed, upon the request of a party, for a duration of not more than three years,
33 without a showing of any further violence or threats of violence since the issuance
34 of the original order, subject to termination or modification by further order of the
35 court either on written stipulation filed with the court or on the motion of a party.
36 The request for renewal may be brought at any time within the three months
37 before the expiration of the order.

38 (2) The failure to state the expiration date on the face of the form creates an
39 order with a duration of three years from the date of issuance.

40 (l) This section does not preclude either party from representation by private
41 counsel or from appearing on his or her own behalf.

42 (m) Upon filing of a petition for an injunction under this section, the respondent
43 shall be personally served with a copy of the petition, temporary restraining order,

1 if any, and notice of hearing of the petition. Service shall be made at least five
2 days before the hearing. The court may, for good cause, on motion of the
3 petitioner or on its own motion, shorten the time for service on the respondent.

4 (n) A notice of hearing under this section shall notify the respondent that if he or
5 she does not attend the hearing, the court may make orders against him or her that
6 could last up to three years.

7 (o)(1) The court may, upon the filing of a declaration by the petitioner that the
8 respondent could not be served within the time required by statute, reissue an
9 order previously issued and dissolved by the court for failure to serve the
10 respondent. The reissued order shall remain in effect until the date set for the
11 hearing.

12 (2) The reissued order shall state on its face the date of expiration of the order.

13 (p)(1) If a respondent, named in an order issued under this section after a
14 hearing, has not been served personally with the order but has received actual
15 notice of the existence and substance of the order through personal appearance in
16 court to hear the terms of the order from the court, no additional proof of service is
17 required for enforcement of the order.

18 (2) If the respondent named in a temporary restraining order is personally served
19 with the order and notice of hearing with respect to a restraining order or
20 protective order based on the temporary restraining order, but the respondent does
21 not appear at the hearing, either personally or by an attorney, and the terms and
22 conditions of the restraining order or protective order issued at the hearing are
23 identical to the temporary restraining order, except for the duration of the order,
24 then the restraining order or protective order issued at the hearing may be served
25 on the respondent by first-class mail sent to that person at the most current address
26 for the respondent available to the court.

27 (3) The Judicial Council form for temporary orders issued pursuant to this
28 subdivision shall contain a statement in substantially the following form:

29 “If you have been personally served with a temporary restraining order and
30 notice of hearing, but you do not appear at the hearing either in person or by a
31 lawyer, and a restraining order that is the same as this temporary restraining order
32 except for the expiration date is issued at the hearing, a copy of the order will be
33 served on you by mail at the following address:_____.

34 If that address is not correct or you wish to verify that the temporary restraining
35 order was converted to a restraining order at the hearing without substantive
36 change and to find out the duration of that order, contact the clerk of the court.”

37 (q)(1) Information on any temporary restraining order or injunction relating to
38 school site violence issued by a court pursuant to this section shall be transmitted
39 to the Department of Justice in accordance with either paragraph (2) or (3).

40 (2) The court shall order the petitioner or the attorney for the petitioner to
41 deliver a copy of any order issued under this section, or a reissuance, extension,
42 modification, or termination of the order, and any subsequent proof of service, by

1 the close of the business day on which the order, reissuance, or termination of the
2 order, and any proof of service, was made, to each law enforcement agency having
3 jurisdiction over the residence of the petitioner and to any additional law
4 enforcement agencies within the court's discretion as are requested by the
5 petitioner.

6 (3) Alternatively, the court or its designee shall transmit, within one business
7 day, to law enforcement personnel all information required under subdivision (b)
8 of Section 6380 of the Family Code regarding any order issued under this section,
9 or a reissuance, extension, modification, or termination of the order, and any
10 subsequent proof of service, by either one of the following methods:

11 (A) Transmitting a physical copy of the order or proof of service to a local law
12 enforcement agency authorized by the Department of Justice to enter orders into
13 the California Law Enforcement Telecommunications System (CLETS).

14 (B) With the approval of the Department of Justice, entering the order of proof
15 of service into CLETS directly.

16 (4) Each appropriate law enforcement agency shall make available information
17 as to the existence and current status of these orders to law enforcement officers
18 responding to the scene of reported unlawful violence or a credible threat of
19 violence.

20 (5) At the request of the petitioner, an order issued under this section shall be
21 served on the respondent, regardless of whether the respondent has been taken into
22 custody, by any law enforcement officer who is present at the scene of reported
23 unlawful violence or a credible threat of violence involving the parties to the
24 proceedings. The petitioner shall provide the officer with an endorsed copy of the
25 order and proof of service that the officer shall complete and send to the issuing
26 court.

27 (6) Upon receiving information at the scene of an incident of unlawful violence
28 or a credible threat of violence that a protective order has been issued under this
29 section, or that a person who has been taken into custody is the subject of an order,
30 if the petitioner or the protected person cannot produce an endorsed copy of the
31 order, a law enforcement officer shall immediately attempt to verify the existence
32 of the order.

33 (7) If the law enforcement officer determines that a protective order has been
34 issued, but not served, the officer shall immediately notify the respondent of the
35 terms of the order and obtain the respondent's address. The law enforcement
36 officer shall at that time also enforce the order, but may not arrest or take the
37 respondent into custody for acts in violation of the order that were committed prior
38 to the verbal notice of the terms and conditions of the order. The law enforcement
39 officer's verbal notice of the terms of the order shall constitute service of the order
40 and constitutes sufficient notice for the purposes of this section, and ~~Section~~
41 Sections 273.6 and subdivision (g) of Section 12021.29825 of the Penal Code. The
42 petitioner shall mail an endorsed copy of the order to the respondent's mailing
43 address provided to the law enforcement officer within one business day of the

1 reported incident of unlawful violence or a credible threat of violence at which a
2 verbal notice of the terms of the order was provided by a law enforcement officer.

3 (r)(1) A person subject to a protective order issued under this section shall not
4 own, possess, purchase, receive, or attempt to purchase or receive a firearm or
5 ammunition while the protective order is in effect.

6 (2) The court shall order a person subject to a protective order issued under this
7 section to relinquish any firearms he or she owns or possesses pursuant to Section
8 527.9.

9 (3) Every person who owns, possesses, purchases, or receives, or attempts to
10 purchase or receive a firearm or ammunition while the protective order is in effect
11 is punishable pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the
12 Penal Code.

13 (s) Any intentional disobedience of any temporary restraining order or
14 injunction granted under this section is punishable pursuant to Section 273.6 of the
15 Penal Code.

16 (t) Nothing in this section may be construed as expanding, diminishing, altering,
17 or modifying the duty, if any, of a postsecondary educational institution to provide
18 a safe environment for students and other persons.

19 (u)(1) The Judicial Council shall develop forms, instructions, and rules relating
20 to matters governed by this section. The forms for the petition and response shall
21 be simple and concise, and their use by parties in actions brought pursuant to this
22 section shall be mandatory.

23 (2) A temporary restraining order or injunction relating to unlawful violence or a
24 credible threat of violence issued by a court pursuant to this section shall be issued
25 on forms adopted by the Judicial Council and that have been approved by the
26 Department of Justice pursuant to subdivision (i) of Section 6380 of the Family
27 Code. However, the fact that an order issued by a court pursuant to this section
28 was not issued on forms adopted by the Judicial Council and approved by the
29 Department of Justice shall not, in and of itself, make the order unenforceable.

30 (v) There is no filing fee for a petition that alleges that a person has threatened
31 violence against a student of the petitioner, or stalked the student, or acted or
32 spoken in any other manner that has placed the student in reasonable fear of
33 violence, and that seeks a protective or restraining order or injunction restraining
34 stalking or future threats of violence, in any action brought pursuant to this
35 section. No fee shall be paid for a subpoena filed in connection with a petition
36 alleging these acts. No fee shall be paid for filing a response to a petition alleging
37 these acts.

38 (w)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
39 Government Code, there shall be no fee for the service of process by a sheriff or
40 marshal of a temporary restraining order or injunction to be issued pursuant to this
41 section if either of the following conditions apply:

42 (A) The temporary restraining order or injunction issued pursuant to this section
43 is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

1 (B) The temporary restraining order or injunction issued pursuant to this section
2 is based upon a credible threat of violence.

3 (2) The Judicial Council shall prepare and develop forms for persons who wish
4 to avail themselves of the services described in this subdivision.

5 **Comment.** Paragraphs (q)(7) and (r)(3) of Section 527.85 are amended to reflect
6 nonsubstantive reorganization of the statutes governing control of deadly weapons.

7 **Note.** A similar amendment of Section 527.85 was recommended by the Commission in
8 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
9 217, 1049-55 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 22. That amendment did not
10 become law, because it was chaptered out by another amendment of the same section. See AB
11 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 4; see also Gov't Code § 9605 (specifying how to
12 resolve conflict between two bills that amend same section).

13 **Code Civ. Proc. § 527.9 (amended). Relinquishment of firearms by order or injunction**

14 SEC. _____. Section 527.9 of the Code of Civil Procedure is amended to read:

15 527.9. (a) A person subject to a temporary restraining order or injunction issued
16 pursuant to Section 527.6, 527.8, or 527.85 or subject to a restraining order issued
17 pursuant to Section 136.2 of the Penal Code, or Section 15657.03 of the Welfare
18 and Institutions Code, shall relinquish the firearm pursuant to this section.

19 (b) Upon the issuance of a protective order against a person pursuant to
20 subdivision (a), the court shall order that person to relinquish any firearm in that
21 person's immediate possession or control, or subject to that person's immediate
22 possession or control, within 24 hours of being served with the order, either by
23 surrendering the firearm to the control of local law enforcement officials, or by
24 selling the firearm to a licensed gun dealer, as specified in ~~Section 12071~~ Sections
25 26700 to 26915, inclusive, of the Penal Code. A person ordered to relinquish any
26 firearm pursuant to this subdivision shall file with the court a receipt showing the
27 firearm was surrendered to the local law enforcement agency or sold to a licensed
28 gun dealer within 48 hours after receiving the order. In the event that it is
29 necessary to continue the date of any hearing due to a request for a relinquishment
30 order pursuant to this section, the court shall ensure that all applicable protective
31 orders described in Section 6218 of the Family Code remain in effect or bifurcate
32 the issues and grant the permanent restraining order pending the date of the
33 hearing.

34 (c) A local law enforcement agency may charge the person subject to the order
35 or injunction a fee for the storage of any firearm relinquished pursuant to this
36 section. The fee shall not exceed the actual cost incurred by the local law
37 enforcement agency for the storage of the firearm. For purposes of this
38 subdivision, "actual cost" means expenses directly related to taking possession of
39 a firearm, storing the firearm, and surrendering possession of the firearm to a
40 licensed dealer as defined in Section ~~12071~~ 26700 of the Penal Code or to the
41 person relinquishing the firearm.

42 (d) The restraining order requiring a person to relinquish a firearm pursuant to
43 subdivision (b) shall state on its face that the respondent is prohibited from

1 owning, possessing, purchasing, or receiving a firearm while the protective order
2 is in effect and that the firearm shall be relinquished to the local law enforcement
3 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
4 surrender or sale shall be filed with the court within a specified period of receipt of
5 the order. The order shall also state on its face the expiration date for
6 relinquishment. Nothing in this section shall limit a respondent's right under
7 existing law to petition the court at a later date for modification of the order.

8 (e) The restraining order requiring a person to relinquish a firearm pursuant to
9 subdivision (b) shall prohibit the person from possessing or controlling any
10 firearm for the duration of the order. At the expiration of the order, the local law
11 enforcement agency shall return possession of any surrendered firearm to the
12 respondent, within five days after the expiration of the relinquishment order,
13 unless the local law enforcement agency determines that (1) the firearm has been
14 stolen, (2) the respondent is prohibited from possessing a firearm because the
15 respondent is in any prohibited class for the possession of firearms, as defined in
16 Sections 12021 and 12021.1 Chapter 2 (commencing with Section 29800) and
17 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
18 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,
19 or (3) another successive restraining order is issued against the respondent under
20 this section. If the local law enforcement agency determines that the respondent is
21 the legal owner of any firearm deposited with the local law enforcement agency
22 and is prohibited from possessing any firearm, the respondent shall be entitled to
23 sell or transfer the firearm to a licensed dealer as defined in Section 12071 26700
24 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to
25 the lawful owner upon his or her identification of the firearm and proof of
26 ownership.

27 (f) The court may, as part of the relinquishment order, grant an exemption from
28 the relinquishment requirements of this section for a particular firearm if the
29 respondent can show that a particular firearm is necessary as a condition of
30 continued employment and that the current employer is unable to reassign the
31 respondent to another position where a firearm is unnecessary. If an exemption is
32 granted pursuant to this subdivision, the order shall provide that the firearm shall
33 be in the physical possession of the respondent only during scheduled work hours
34 and during travel to and from his or her place of employment. In any case
35 involving a peace officer who as a condition of employment and whose personal
36 safety depends on the ability to carry a firearm, a court may allow the peace
37 officer to continue to carry a firearm, either on duty or off duty, if the court finds
38 by a preponderance of the evidence that the officer does not pose a threat of harm.
39 Prior to making this finding, the court shall require a mandatory psychological
40 evaluation of the peace officer and may require the peace officer to enter into
41 counseling or other remedial treatment program to deal with any propensity for
42 domestic violence.

(g) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

Comment. Section 527.9 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Note. A similar amendment of Section 527.9 was recommended by the Commission in *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217, 1055-58 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 23. That amendment did not become law, because it was chaptered out by another amendment of the same section. See AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 5; see also Gov't Code § 9605 (specifying how to resolve conflict between two bills that amend same section).

Educ. Code § 49330 (amended). "Injurious object" defined

SEC. _____. Section 49330 of the Education Code is amended to read:

49330. (a) As used in this article "injurious object" shall mean those objects specified in ~~Sections 653k, 12001, 12020, 12220, 12401, and 12402 of the Penal Code, and the following sections:~~

(1) Section 16250 of the Penal Code.

(2) Subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code.

(3) Section 16590 of the Penal Code.

(4) Section 16880 of the Penal Code.

(5) Section 17235 of the Penal Code.

(6) Section 17240 of the Penal Code.

(7) Section 17250 of the Penal Code.

(b) As used in this article, "injurious object" shall also mean objects capable of inflicting substantial bodily damage, not necessary for the academic purpose of the pupil.

(c) As used in this section, "academic purpose" means any school sponsored activity or class of instruction scheduled during the schoolday.

(d) "Injurious object" does not include any personal possessions or items of apparel which a schoolage child reasonably may be expected either to have in his or her possession or to wear.

Comment. Section 49330 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

An erroneous cross-reference to Penal Code Section 12220 has been corrected by replacing it with a cross-reference to Penal Code Section 16880, which continues the definition of "machinegun" formerly found in Penal Code Section 12200.

The section is also amended to insert subdivision labels.

Note. The Commission did not include a conforming revision of Section 49330 in its recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, because the

1 proper manner of conforming the provision presented issues that required further study. Instead,
2 the Commission included the matter in its list of “Minor Clean-Up Issues for Possible Future
3 Legislative Attention.” See 38 Cal. L. Revision Comm’n Reports 217, 280 (Item # 96) (2009);
4 Memorandum 2009-28, pp. 2-4.

5 On further examination, the amendment shown above appears proper, for the following
6 reasons:

- 7 (1) Penal Code Section 16590 (operative January 1, 2012) references the types of weapons
8 previously described in Penal Code Section 12020 (to be repealed January 1, 2012).
- 9 (2) Penal Code Section 17235 (operative January 1, 2012) will continue the definition of
10 “switchblade” knife found in Penal Code Section 653k (to be repealed on January 1,
11 2012).
- 12 (3) Penal Code Section 17240 (operative January 1, 2012) will continue the definition of
13 “tear gas” found in Penal Code Section 12401 (to be repealed on January 1, 2012).
- 14 (4) Penal Code Section 17250 (operative January 1, 2012) will continue the definition of
15 “tear gas weapon” found in Penal Code Section 12402 (to be repealed January 1, 2012).
- 16 (5) The cross-reference to Penal Code Section 12220 in Education Code Section 49330
17 appears to be incorrect. That provision does not describe, define, or “specify” any
18 “injurious object.” Rather, it prohibits certain conduct relating to machineguns. The
19 definition of “machinegun” is in Penal Code Section 12200. It seems likely that the
20 Legislature intended to cross-refer to that section, not Section 12220, in Education Code
21 Section 49330. Penal Code Section 16880 (operative January 1, 2012) will continue the
22 definition of “machinegun” found in Penal Code Section 12200 (to be repealed January 1,
23 2012).
- 24 (6) Penal Code Section 16250 (operative January 1, 2012) will continue the definition of
25 “BB device” found in Penal Code Section 12001(g) (to be repealed on January 1, 2012).
- 26 (7) Penal Code Section 16520(a)-(d) (operative January 1, 2012) will continue the definitions
27 of “firearm” found in Penal Code Section 12001 (b)-(e) (to be repealed January 1, 2012).
- 28 (8) Cross-references to the provisions that will continue the definitions of “firearm capable of
29 being concealed upon the person,” “handgun,” “pistol,” and “revolver” found in Penal
30 Code Section 12001(a) and (f) (to be repealed January 1, 2012) do not need to be
31 included in Education Code Section 49330, because those weapons are subsumed in the
32 cross-reference to the definition of “firearm.”
- 33 (9) A cross-reference to the provision that will continue the definition of “antique firearm”
34 found in Penal Code Section 12001(e) (to be repealed January 1, 2012) does not need to
35 be included in Education Code Section 49330, because the treatment of an “antique
36 firearm” is adequately covered by Penal Code Section 16170(b) (operative January 1,
37 2012) and the cross-reference to Penal Code Section 16520(d).
- 38 (10) Penal Code Section 12001 (to be repealed on January 1, 2012) does not seem to
39 “specify” any type of weapon beyond the ones mentioned above or subsumed in Section
40 12001’s definitions of “firearm.” Consequently, it does not appear necessary to cross-
41 reference any other provision in Education Code Section 49330, particularly since that
42 section already contains a catchall provision for “objects capable of inflicting substantial
43 bodily damage, not necessary for the academic purpose of the pupil.”

44 **Staff Note.** While the bills to implement the Commission’s nonsubstantive reorganization of
45 the deadly weapon statutes were pending, the Governor’s office expressed concern about the lack
46 of a conforming revision of Education Code Section 49330. The provision is important and
47 widely used, so it needs to be conformed promptly, before the nonsubstantive reorganization
48 becomes operative on January 1, 2012. The above amendment is intended to accomplish this. We
49 encourage comment on whether the amendment should be revised in any way.

1 **Fam. Code § 6389 (amended). Effect of protective order on ownership, possession,**
2 **purchase, and receipt of firearm**

3 SEC. _____. Section 6389 of the Family Code is amended to read:

4 6389. (a) A person subject to a protective order, as defined in Section 6218,
5 shall not own, possess, purchase, or receive a firearm or ammunition while that
6 protective order is in effect. Every person who owns, possesses, purchases or
7 receives, or attempts to purchase or receive a firearm or ammunition while the
8 protective order is in effect is punishable pursuant to ~~subdivision (g) of Section~~
9 ~~12021~~ Section 29825 of the Penal Code.

10 (b) On all forms providing notice that a protective order has been requested or
11 granted, the Judicial Council shall include a notice that, upon service of the order,
12 the respondent shall be ordered to relinquish possession or control of any firearms
13 and not to purchase or receive or attempt to purchase or receive any firearms for a
14 period not to exceed the duration of the restraining order.

15 (c)(1) Upon issuance of a protective order, as defined in Section 6218, the court
16 shall order the respondent to relinquish any firearm in the respondent's immediate
17 possession or control or subject to the respondent's immediate possession or
18 control.

19 (2) The relinquishment ordered pursuant to paragraph (1) shall occur by
20 immediately surrendering the firearm in a safe manner, upon request of any law
21 enforcement officer, to the control of the officer, after being served with the
22 protective order. Alternatively, if no request is made by a law enforcement officer,
23 the relinquishment shall occur within 24 hours of being served with the order, by
24 either surrendering the firearm in a safe manner to the control of local law
25 enforcement officials, or by selling the firearm to a licensed gun dealer, as
26 specified in ~~Section 12071~~ Sections 26700 to 26915, inclusive, of the Penal Code.
27 The law enforcement officer or licensed gun dealer taking possession of the
28 firearm pursuant to this subdivision shall issue a receipt to the person relinquishing
29 the firearm at the time of relinquishment. A person ordered to relinquish any
30 firearm pursuant to this subdivision shall file with the court that issued the
31 protective order, within 48 hours after being served with the order, the receipt
32 showing the firearm was surrendered to a local law enforcement agency or sold to
33 a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of
34 the protective order.

35 (3) The forms for protective orders adopted by the Judicial Council and
36 approved by the Department of Justice shall require the petitioner to describe the
37 number, types, and locations of any firearms presently known by the petitioner to
38 be possessed or controlled by the respondent.

39 (4) It is recommended that every law enforcement agency in the state develop,
40 adopt, and implement written policies and standards for law enforcement officers
41 who request immediate relinquishment of firearms.

42 (d) If the respondent declines to relinquish possession of any firearm based on
43 the assertion of the right against self-incrimination, as provided by the Fifth

1 Amendment to the United States Constitution and Section 15 of Article I of the
2 California Constitution, the court may grant use immunity for the act of
3 relinquishing the firearm required under this section.

4 (e) A local law enforcement agency may charge the respondent a fee for the
5 storage of any firearm pursuant to this section. This fee shall not exceed the actual
6 cost incurred by the local law enforcement agency for the storage of the firearm.
7 For purposes of this subdivision, “actual cost” means expenses directly related to
8 taking possession of a firearm, storing the firearm, and surrendering possession of
9 the firearm to a licensed dealer as defined in Section ~~12071~~ 26700 of the Penal
10 Code or to the respondent.

11 (f) The restraining order requiring a person to relinquish a firearm pursuant to
12 subdivision (c) shall state on its face that the respondent is prohibited from
13 owning, possessing, purchasing, or receiving a firearm while the protective order
14 is in effect and that the firearm shall be relinquished to the local law enforcement
15 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
16 surrender or sale shall be filed with the court within a specified period of receipt of
17 the order. The order shall also state on its face the expiration date for
18 relinquishment. Nothing in this section shall limit a respondent’s right under
19 existing law to petition the court at a later date for modification of the order.

20 (g) The restraining order requiring a person to relinquish a firearm pursuant to
21 subdivision (c) shall prohibit the person from possessing or controlling any
22 firearm for the duration of the order. At the expiration of the order, the local law
23 enforcement agency shall return possession of any surrendered firearm to the
24 respondent, within five days after the expiration of the relinquishment order,
25 unless the local law enforcement agency determines that (1) the firearm has been
26 stolen, (2) the respondent is prohibited from possessing a firearm because the
27 respondent is in any prohibited class for the possession of firearms, as defined in
28 ~~Sections 12021 and 12021.1~~ Chapter 2 (commencing with Section 29800) and
29 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
30 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,
31 or (3) another successive restraining order is issued against the respondent under
32 this section. If the local law enforcement agency determines that the respondent is
33 the legal owner of any firearm deposited with the local law enforcement agency
34 and is prohibited from possessing any firearm, the respondent shall be entitled to
35 sell or transfer the firearm to a licensed dealer as defined in Section ~~12071~~ 26700
36 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to
37 the lawful owner upon his or her identification of the firearm and proof of
38 ownership.

39 (h) The court may, as part of the relinquishment order, grant an exemption from
40 the relinquishment requirements of this section for a particular firearm if the
41 respondent can show that a particular firearm is necessary as a condition of
42 continued employment and that the current employer is unable to reassign the
43 respondent to another position where a firearm is unnecessary. If an exemption is

1 granted pursuant to this subdivision, the order shall provide that the firearm shall
2 be in the physical possession of the respondent only during scheduled work hours
3 and during travel to and from his or her place of employment. In any case
4 involving a peace officer who as a condition of employment and whose personal
5 safety depends on the ability to carry a firearm, a court may allow the peace
6 officer to continue to carry a firearm, either on duty or off duty, if the court finds
7 by a preponderance of the evidence that the officer does not pose a threat of harm.
8 Prior to making this finding, the court shall require a mandatory psychological
9 evaluation of the peace officer and may require the peace officer to enter into
10 counseling or other remedial treatment program to deal with any propensity for
11 domestic violence.

12 (i) During the period of the relinquishment order, a respondent is entitled to
13 make one sale of all firearms that are in the possession of a local law enforcement
14 agency pursuant to this section. A licensed gun dealer, who presents a local law
15 enforcement agency with a bill of sale indicating that all firearms owned by the
16 respondent that are in the possession of the local law enforcement agency have
17 been sold by the respondent to the licensed gun dealer, shall be given possession
18 of those firearms, at the location where a respondent's firearms are stored, within
19 five days of presenting the local law enforcement agency with a bill of sale.

20 (j) The disposition of any unclaimed property under this section shall be made
21 pursuant to Section 1413 of the Penal Code.

22 (k) The return of a firearm to any person pursuant to subdivision (g) shall not be
23 subject to the requirements of ~~subdivision (d) of Section 12072~~ Section 27545
24 of the Penal Code.

25 (l) If the respondent notifies the court that he or she owns a firearm that is not in
26 his or her immediate possession, the court may limit the order to exclude that
27 firearm if the judge is satisfied the respondent is unable to gain access to that
28 firearm while the protective order is in effect.

29 (m) Any respondent to a protective order who violates any order issued pursuant
30 to this section shall be punished under the provisions of ~~subdivision (g) of Section~~
31 12021 Section 29825 of the Penal Code.

32 **Comment.** Section 6389 is amended to reflect nonsubstantive reorganization of the statutes
33 governing control of deadly weapons.

34 **Note.** A similar amendment of Section 6389 was recommended by the Commission in
35 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
36 217, 1061-66 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 26. That amendment did not
37 become law, because it was chaptered out by another amendment of the same section. See AB
38 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 23; see also Gov't Code § 9605 (specifying how to
39 resolve conflict between two bills that amend same section).

40 **Gov't Code § 6254 (amended). Records not required to be disclosed**

41 SEC. _____. Section 6254 of the Government Code is amended to read:

1 6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this
2 chapter shall be construed to require disclosure of records that are any of the
3 following:

4 (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are
5 not retained by the public agency in the ordinary course of business, if the public
6 interest in withholding those records clearly outweighs the public interest in
7 disclosure.

8 (b) Records pertaining to pending litigation to which the public agency is a
9 party, or to claims made pursuant to Division 3.6 (commencing with Section 810),
10 until the pending litigation or claim has been finally adjudicated or otherwise
11 settled.

12 (c) Personnel, medical, or similar files, the disclosure of which would constitute
13 an unwarranted invasion of personal privacy.

14 (d) Contained in or related to any of the following:

15 (1) Applications filed with any state agency responsible for the regulation or
16 supervision of the issuance of securities or of financial institutions, including, but
17 not limited to, banks, savings and loan associations, industrial loan companies,
18 credit unions, and insurance companies.

19 (2) Examination, operating, or condition reports prepared by, on behalf of, or for
20 the use of, any state agency referred to in paragraph (1).

21 (3) Preliminary drafts, notes, or interagency or intra-agency communications
22 prepared by, on behalf of, or for the use of, any state agency referred to in
23 paragraph (1).

24 (4) Information received in confidence by any state agency referred to in
25 paragraph (1).

26 (e) Geological and geophysical data, plant production data, and similar
27 information relating to utility systems development, or market or crop reports, that
28 are obtained in confidence from any person.

29 (f) Records of complaints to, or investigations conducted by, or records of
30 intelligence information or security procedures of, the office of the Attorney
31 General and the Department of Justice, the California Emergency Management
32 Agency, and any state or local police agency, or any investigatory or security files
33 compiled by any other state or local police agency, or any investigatory or security
34 files compiled by any other state or local agency for correctional, law
35 enforcement, or licensing purposes. However, state and local law enforcement
36 agencies shall disclose the names and addresses of persons involved in, or
37 witnesses other than confidential informants to, the incident, the description of any
38 property involved, the date, time, and location of the incident, all diagrams,
39 statements of the parties involved in the incident, the statements of all witnesses,
40 other than confidential informants, to the victims of an incident, or an authorized
41 representative thereof, an insurance carrier against which a claim has been or
42 might be made, and any person suffering bodily injury or property damage or loss,
43 as the result of the incident caused by arson, burglary, fire, explosion, larceny,

1 robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision
2 (b) of Section 13951, unless the disclosure would endanger the safety of a witness
3 or other person involved in the investigation, or unless disclosure would endanger
4 the successful completion of the investigation or a related investigation. However,
5 nothing in this division shall require the disclosure of that portion of those
6 investigative files that reflects the analysis or conclusions of the investigating
7 officer.

8 Customer lists provided to a state or local police agency by an alarm or security
9 company at the request of the agency shall be construed to be records subject to
10 this subdivision.

11 Notwithstanding any other provision of this subdivision, state and local law
12 enforcement agencies shall make public the following information, except to the
13 extent that disclosure of a particular item of information would endanger the safety
14 of a person involved in an investigation or would endanger the successful
15 completion of the investigation or a related investigation:

16 (1) The full name and occupation of every individual arrested by the agency, the
17 individual's physical description including date of birth, color of eyes and hair,
18 sex, height and weight, the time and date of arrest, the time and date of booking,
19 the location of the arrest, the factual circumstances surrounding the arrest, the
20 amount of bail set, the time and manner of release or the location where the
21 individual is currently being held, and all charges the individual is being held
22 upon, including any outstanding warrants from other jurisdictions and parole or
23 probation holds.

24 (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the
25 time, substance, and location of all complaints or requests for assistance received
26 by the agency and the time and nature of the response thereto, including, to the
27 extent the information regarding crimes alleged or committed or any other incident
28 investigated is recorded, the time, date, and location of occurrence, the time and
29 date of the report, the name and age of the victim, the factual circumstances
30 surrounding the crime or incident, and a general description of any injuries,
31 property, or weapons involved. The name of a victim of any crime defined by
32 Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e,
33 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as
34 added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of
35 Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7,
36 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at
37 the victim's request, or at the request of the victim's parent or guardian if the
38 victim is a minor. When a person is the victim of more than one crime,
39 information disclosing that the person is a victim of a crime defined in any of the
40 sections of the Penal Code set forth in this subdivision may be deleted at the
41 request of the victim, or the victim's parent or guardian if the victim is a minor, in
42 making the report of the crime, or of any crime or incident accompanying the

1 crime, available to the public in compliance with the requirements of this
2 paragraph.

3 (3) Subject to the restrictions of Section 841.5 of the Penal Code and this
4 subdivision, the current address of every individual arrested by the agency and the
5 current address of the victim of a crime, where the requester declares under
6 penalty of perjury that the request is made for a scholarly, journalistic, political, or
7 governmental purpose, or that the request is made for investigation purposes by a
8 licensed private investigator as described in Chapter 11.3 (commencing with
9 Section 7512) of Division 3 of the Business and Professions Code. However, the
10 address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262,
11 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d,
12 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes
13 of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006,
14 statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or
15 647.6 of the Penal Code shall remain confidential. Address information obtained
16 pursuant to this paragraph may not be used directly or indirectly, or furnished to
17 another, to sell a product or service to any individual or group of individuals, and
18 the requester shall execute a declaration to that effect under penalty of perjury.
19 Nothing in this paragraph shall be construed to prohibit or limit a scholarly,
20 journalistic, political, or government use of address information obtained pursuant
21 to this paragraph.

22 (g) Test questions, scoring keys, and other examination data used to administer a
23 licensing examination, examination for employment, or academic examination,
24 except as provided for in Chapter 3 (commencing with Section 99150) of Part 65
25 of Division 14 of Title 3 of the Education Code.

26 (h) The contents of real estate appraisals or engineering or feasibility estimates
27 and evaluations made for or by the state or local agency relative to the acquisition
28 of property, or to prospective public supply and construction contracts, until all of
29 the property has been acquired or all of the contract agreement obtained. However,
30 the law of eminent domain shall not be affected by this provision.

31 (i) Information required from any taxpayer in connection with the collection of
32 local taxes that is received in confidence and the disclosure of the information to
33 other persons would result in unfair competitive disadvantage to the person
34 supplying the information.

35 (j) Library circulation records kept for the purpose of identifying the borrower of
36 items available in libraries, and library and museum materials made or acquired
37 and presented solely for reference or exhibition purposes. The exemption in this
38 subdivision shall not apply to records of fines imposed on the borrowers.

39 (k) Records, the disclosure of which is exempted or prohibited pursuant to
40 federal or state law, including, but not limited to, provisions of the Evidence Code
41 relating to privilege.

42 (l) Correspondence of and to the Governor or employees of the Governor's
43 office or in the custody of or maintained by the Governor's Legal Affairs

1 Secretary. However, public records shall not be transferred to the custody of the
2 Governor's Legal Affairs Secretary to evade the disclosure provisions of this
3 chapter.

4 (m) In the custody of or maintained by the Legislative Counsel, except those
5 records in the public database maintained by the Legislative Counsel that are
6 described in Section 10248.

7 (n) Statements of personal worth or personal financial data required by a
8 licensing agency and filed by an applicant with the licensing agency to establish
9 his or her personal qualification for the license, certificate, or permit applied for.

10 (o) Financial data contained in applications for financing under Division 27
11 (commencing with Section 44500) of the Health and Safety Code, where an
12 authorized officer of the California Pollution Control Financing Authority
13 determines that disclosure of the financial data would be competitively injurious to
14 the applicant and the data is required in order to obtain guarantees from the United
15 States Small Business Administration. The California Pollution Control Financing
16 Authority shall adopt rules for review of individual requests for confidentiality
17 under this section and for making available to the public those portions of an
18 application that are subject to disclosure under this chapter.

19 (p) Records of state agencies related to activities governed by Chapter 10.3
20 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525),
21 and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state
22 agency's deliberative processes, impressions, evaluations, opinions,
23 recommendations, meeting minutes, research, work products, theories, or strategy,
24 or that provide instruction, advice, or training to employees who do not have full
25 collective bargaining and representation rights under these chapters. Nothing in
26 this subdivision shall be construed to limit the disclosure duties of a state agency
27 with respect to any other records relating to the activities governed by the
28 employee relations acts referred to in this subdivision.

29 (q) Records of state agencies related to activities governed by Article 2.6
30 (commencing with Section 14081), Article 2.8 (commencing with Section
31 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part
32 3 of Division 9 of the Welfare and Institutions Code, that reveal the special
33 negotiator's deliberative processes, discussions, communications, or any other
34 portion of the negotiations with providers of health care services, impressions,
35 opinions, recommendations, meeting minutes, research, work product, theories, or
36 strategy, or that provide instruction, advice, or training to employees.

37 Except for the portion of a contract containing the rates of payment, contracts
38 for inpatient services entered into pursuant to these articles, on or after April 1,
39 1984, shall be open to inspection one year after they are fully executed. If a
40 contract for inpatient services that is entered into prior to April 1, 1984, is
41 amended on or after April 1, 1984, the amendment, except for any portion
42 containing the rates of payment, shall be open to inspection one year after it is
43 fully executed. If the California Medical Assistance Commission enters into

1 contracts with health care providers for other than inpatient hospital services, those
2 contracts shall be open to inspection one year after they are fully executed.

3 Three years after a contract or amendment is open to inspection under this
4 subdivision, the portion of the contract or amendment containing the rates of
5 payment shall be open to inspection.

6 Notwithstanding any other provision of law, the entire contract or amendment
7 shall be open to inspection by the Joint Legislative Audit Committee and the
8 Legislative Analyst's Office. The committee and that office shall maintain the
9 confidentiality of the contracts and amendments until the time a contract or
10 amendment is fully open to inspection by the public.

11 (r) Records of Native American graves, cemeteries, and sacred places and
12 records of Native American places, features, and objects described in Sections
13 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the
14 possession of, the Native American Heritage Commission, another state agency, or
15 a local agency.

16 (s) A final accreditation report of the Joint Commission on Accreditation of
17 Hospitals that has been transmitted to the State Department of Health Care
18 Services pursuant to subdivision (b) of Section 1282 of the Health and Safety
19 Code.

20 (t) Records of a local hospital district, formed pursuant to Division 23
21 (commencing with Section 32000) of the Health and Safety Code, or the records
22 of a municipal hospital, formed pursuant to Article 7 (commencing with Section
23 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of
24 Division 3 of Title 4 of this code, that relate to any contract with an insurer or
25 nonprofit hospital service plan for inpatient or outpatient services for alternative
26 rates pursuant to Section 10133 of the Insurance Code. However, the record shall
27 be open to inspection within one year after the contract is fully executed.

28 (u)(1) Information contained in applications for licenses to carry firearms issued
29 pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215 of the Penal Code by
30 the sheriff of a county or the chief or other head of a municipal police department
31 that indicates when or where the applicant is vulnerable to attack or that concerns
32 the applicant's medical or psychological history or that of members of his or her
33 family.

34 (2) The home address and telephone number of peace officers, judges, court
35 commissioners, and magistrates that are set forth in applications for licenses to
36 carry firearms issued pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215
37 of the Penal Code by the sheriff of a county or the chief or other head of a municipal
38 police department.

39 (3) The home address and telephone number of peace officers, judges, court
40 commissioners, and magistrates that are set forth in licenses to carry firearms
41 issued pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215 of the Penal
42 Code by the sheriff of a county or the chief or other head of a municipal police
43 department.

1 (v)(1) Records of the Managed Risk Medical Insurance Board related to
2 activities governed by Part 6.3 (commencing with Section 12695), Part 6.5
3 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5),
4 and Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance
5 Code, and that reveal any of the following:

6 (A) The deliberative processes, discussions, communications, or any other
7 portion of the negotiations with entities contracting or seeking to contract with the
8 board, entities with which the board is considering a contract, or entities with
9 which the board is considering or enters into any other arrangement under which
10 the board provides, receives, or arranges services or reimbursement.

11 (B) The impressions, opinions, recommendations, meeting minutes, research,
12 work product, theories, or strategy of the board or its staff, or records that provide
13 instructions, advice, or training to employees.

14 (2)(A) Except for the portion of a contract that contains the rates of payment,
15 contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part
16 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section
17 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the
18 Insurance Code, on or after July 1, 1991, shall be open to inspection one year after
19 their effective dates.

20 (B) If a contract that is entered into prior to July 1, 1991, is amended on or after
21 July 1, 1991, the amendment, except for any portion containing the rates of
22 payment, shall be open to inspection one year after the effective date of the
23 amendment.

24 (3) Three years after a contract or amendment is open to inspection pursuant to
25 this subdivision, the portion of the contract or amendment containing the rates of
26 payment shall be open to inspection.

27 (4) Notwithstanding any other provision of law, the entire contract or
28 amendments to a contract shall be open to inspection by the Joint Legislative
29 Audit Committee. The committee shall maintain the confidentiality of the
30 contracts and amendments thereto, until the contracts or amendments to the
31 contracts are open to inspection pursuant to paragraph (3).

32 (w)(1) Records of the Managed Risk Medical Insurance Board related to
33 activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of
34 Division 2 of the Insurance Code, and that reveal the deliberative processes,
35 discussions, communications, or any other portion of the negotiations with health
36 plans, or the impressions, opinions, recommendations, meeting minutes, research,
37 work product, theories, or strategy of the board or its staff, or records that provide
38 instructions, advice, or training to employees.

39 (2) Except for the portion of a contract that contains the rates of payment,
40 contracts for health coverage entered into pursuant to Chapter 8 (commencing
41 with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after
42 January 1, 1993, shall be open to inspection one year after they have been fully
43 executed.

1 (3) Notwithstanding any other provision of law, the entire contract or
2 amendments to a contract shall be open to inspection by the Joint Legislative
3 Audit Committee. The committee shall maintain the confidentiality of the
4 contracts and amendments thereto, until the contracts or amendments to the
5 contracts are open to inspection pursuant to paragraph (2).

6 (x) Financial data contained in applications for registration, or registration
7 renewal, as a service contractor filed with the Director of Consumer Affairs
8 pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the
9 Business and Professions Code, for the purpose of establishing the service
10 contractor's net worth, or financial data regarding the funded accounts held in
11 escrow for service contracts held in force in this state by a service contractor.

12 (y)(1) Records of the Managed Risk Medical Insurance Board related to
13 activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4
14 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and
15 that reveal any of the following:

16 (A) The deliberative processes, discussions, communications, or any other
17 portion of the negotiations with entities contracting or seeking to contract with the
18 board, entities with which the board is considering a contract, or entities with
19 which the board is considering or enters into any other arrangement under which
20 the board provides, receives, or arranges services or reimbursement.

21 (B) The impressions, opinions, recommendations, meeting minutes, research,
22 work product, theories, or strategy of the board or its staff, or records that provide
23 instructions, advice, or training to employees.

24 (2)(A) Except for the portion of a contract that contains the rates of payment,
25 contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or
26 Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance
27 Code, on or after January 1, 1998, shall be open to inspection one year after their
28 effective dates.

29 (B) If a contract entered into pursuant to Part 6.2 (commencing with Section
30 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the
31 Insurance Code is amended, the amendment shall be open to inspection one year
32 after the effective date of the amendment.

33 (3) Three years after a contract or amendment is open to inspection pursuant to
34 this subdivision, the portion of the contract or amendment containing the rates of
35 payment shall be open to inspection.

36 (4) Notwithstanding any other provision of law, the entire contract or
37 amendments to a contract shall be open to inspection by the Joint Legislative
38 Audit Committee. The committee shall maintain the confidentiality of the
39 contracts and amendments thereto until the contract or amendments to a contract
40 are open to inspection pursuant to paragraph (2) or (3).

41 (5) The exemption from disclosure provided pursuant to this subdivision for the
42 contracts, deliberative processes, discussions, communications, negotiations,
43 impressions, opinions, recommendations, meeting minutes, research, work

1 product, theories, or strategy of the board or its staff shall also apply to the
2 contracts, deliberative processes, discussions, communications, negotiations,
3 impressions, opinions, recommendations, meeting minutes, research, work
4 product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with
5 Section 12699.50) of Division 2 of the Insurance Code.

6 (z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section
7 2891.1 of the Public Utilities Code.

8 (aa) A document prepared by or for a state or local agency that assesses its
9 vulnerability to terrorist attack or other criminal acts intended to disrupt the public
10 agency's operations and that is for distribution or consideration in a closed
11 session.

12 (ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of
13 the United States Code, that is voluntarily submitted to the California Emergency
14 Management Agency for use by that office, including the identity of the person
15 who or entity that voluntarily submitted the information. As used in this
16 subdivision, "voluntarily submitted" means submitted in the absence of the office
17 exercising any legal authority to compel access to or submission of critical
18 infrastructure information. This subdivision shall not affect the status of
19 information in the possession of any other state or local governmental agency.

20 (ac) All information provided to the Secretary of State by a person for the
21 purpose of registration in the Advance Health Care Directive Registry, except that
22 those records shall be released at the request of a health care provider, a public
23 guardian, or the registrant's legal representative.

24 (ad) The following records of the State Compensation Insurance Fund:

25 (1) Records related to claims pursuant to Chapter 1 (commencing with Section
26 3200) of Division 4 of the Labor Code, to the extent that confidential medical
27 information or other individually identifiable information would be disclosed.

28 (2) Records related to the discussions, communications, or any other portion of
29 the negotiations with entities contracting or seeking to contract with the fund, and
30 any related deliberations.

31 (3) Records related to the impressions, opinions, recommendations, meeting
32 minutes of meetings or sessions that are lawfully closed to the public, research,
33 work product, theories, or strategy of the fund or its staff, on the development of
34 rates, contracting strategy, underwriting, or competitive strategy pursuant to the
35 powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part
36 3 of Division 2 of the Insurance Code.

37 (4) Records obtained to provide workers' compensation insurance under Chapter
38 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code,
39 including, but not limited to, any medical claims information, policyholder
40 information provided that nothing in this paragraph shall be interpreted to prevent
41 an insurance agent or broker from obtaining proprietary information or other
42 information authorized by law to be obtained by the agent or broker, and
43 information on rates, pricing, and claims handling received from brokers.

1 (5)(A) Records that are trade secrets pursuant to Section 6276.44, or Article 11
2 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence
3 Code, including without limitation, instructions, advice, or training provided by
4 the State Compensation Insurance Fund to its board members, officers, and
5 employees regarding the fund's special investigation unit, internal audit unit, and
6 informational security, marketing, rating, pricing, underwriting, claims handling,
7 audits, and collections.

8 (B) Notwithstanding subparagraph (A), the portions of records containing trade
9 secrets shall be available for review by the Joint Legislative Audit Committee, the
10 Bureau of State Audits, Division of Workers' Compensation, and the Department
11 of Insurance to ensure compliance with applicable law.

12 (6)(A) Internal audits containing proprietary information and the following
13 records that are related to an internal audit:

14 (i) Personal papers and correspondence of any person providing assistance to the
15 fund when that person has requested in writing that his or her papers and
16 correspondence be kept private and confidential. Those papers and correspondence
17 shall become public records if the written request is withdrawn, or upon order of
18 the fund.

19 (ii) Papers, correspondence, memoranda, or any substantive information
20 pertaining to any audit not completed or an internal audit that contains proprietary
21 information.

22 (B) Notwithstanding subparagraph (A), the portions of records containing
23 proprietary information, or any information specified in subparagraph (A) shall be
24 available for review by the Joint Legislative Audit Committee, the Bureau of State
25 Audits, Division of Workers' Compensation, and the Department of Insurance to
26 ensure compliance with applicable law.

27 (7)(A) Except as provided in subparagraph (C), contracts entered into pursuant
28 to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the
29 Insurance Code shall be open to inspection one year after the contract has been
30 fully executed.

31 (B) If a contract entered into pursuant to Chapter 4 (commencing with Section
32 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment
33 shall be open to inspection one year after the amendment has been fully executed.

34 (C) Three years after a contract or amendment is open to inspection pursuant to
35 this subdivision, the portion of the contract or amendment containing the rates of
36 payment shall be open to inspection.

37 (D) Notwithstanding any other provision of law, the entire contract or
38 amendments to a contract shall be open to inspection by the Joint Legislative
39 Audit Committee. The committee shall maintain the confidentiality of the
40 contracts and amendments thereto until the contract or amendments to a contract
41 are open to inspection pursuant to this paragraph.

1 (E) Nothing in this paragraph is intended to apply to documents related to
2 contracts with public entities that are not otherwise expressly confidential as to
3 that public entity.

4 (F) For purposes of this paragraph, “fully executed” means the point in time
5 when all of the necessary parties to the contract have signed the contract.

6 Nothing in this section prevents any agency from opening its records concerning
7 the administration of the agency to public inspection, unless disclosure is
8 otherwise prohibited by law.

9 Nothing in this section prevents any health facility from disclosing to a certified
10 bargaining agent relevant financing information pursuant to Section 8 of the
11 National Labor Relations Act (29 U.S.C. Sec. 158).

12 **Comment.** Subdivision (u) of Section 6254 is amended to reflect nonsubstantive
13 reorganization of the statutes governing control of deadly weapons.

14 **Note.** A similar amendment of Section 6254 was recommended by the Commission in
15 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports
16 217, 1071-86 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 33. That amendment did not
17 become law, because it was chaptered out by another amendment of the same section. See AB
18 1887 (Villines), 2010 Cal. Stat. ch. 32, § 1; see also Gov’t Code § 9605 (specifying how to
19 resolve conflict between two bills that amend same section); 2010 Cal. Stat. ch. 178, § 108
20 (subordination clause).

21 **Gov’t Code § 53071.5, as it reads in 2010 Cal. Stat. ch. 178, § 35 (amended). Imitation**
22 **firearms**

23 SEC. _____. Section 53071.5 of the Government Code, as it reads in Section 35
24 of Chapter 178 of the Statutes of 2010, is amended to read:

25 53071.5. By the enforcement of this section, the Legislature occupies the whole
26 field of regulation of the manufacture, sale, or possession of imitation firearms, as
27 defined in subdivision (a) of Section 16700 of the Penal Code, and that ~~section~~
28 subdivision shall preempt and be exclusive of all regulations relating to the
29 manufacture, sale, or possession of imitation firearms, including regulations
30 governing the manufacture, sale, or possession of BB devices and air rifles
31 described in Section 16250 of the Penal Code.

32 **Comment.** Section 53071.5 is amended to conform to the language recommended in
33 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports
34 217, 1088 (2009), which was drafted so as to continue preexisting law without substantive
35 change.

36 **Note.** The version of Government Code Section 53071.5 that existed when the Commission
37 prepared its report included three cross-references to material that would be relocated by the
38 deadly weapons reorganization. To reflect that reorganization, the Commission recommended the
39 following amendment of that section:

40 53071.5. By the enforcement of this section, the Legislature occupies the whole field of
41 regulation of the manufacture, sale, or possession of imitation firearms, as defined in ~~Section~~
42 ~~12550~~ subdivision (a) of Section 16700 of the Penal Code, and that ~~section~~ subdivision shall
43 preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of
44 imitation firearms, including regulations governing the manufacture, sale, or possession of

1 BB devices and air rifles described in ~~subdivision (g) of Section 12001~~ Section 16250 of the
2 Penal Code.

3 **Comment.** Section 53071.5 is amended to reflect nonsubstantive reorganization of the
4 statutes governing control of deadly weapons.

5 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
6 217, 1088 (2009).

7 That amendment was included in the lengthy bill consisting of conforming revisions, but with
8 a deviation from the language recommended by the Commission. The bill only corrected two of
9 the three cross-references; it did not replace "that section" with "that subdivision." See SB 1115
10 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 35. To avoid the expense of amending
11 such a lengthy bill, that problem was not addressed in the legislative process.

12 The failure to replace "that section" with "that subdivision" could be viewed as a substantive
13 change, because "that section" now refers to new Penal Code Section 16700 (operative Jan. 1,
14 2012), instead of Penal Code Section 12550 (to be repealed Jan. 1, 2012). Those sections are not
15 interchangeable. Although new Section 16700(a) derives from soon-to-be-repealed Section
16 12550, new Section 16700(b) does not. It derives instead from Section 12555(c) (to be repealed
17 Jan. 1, 2012).

18 By replacing "that section" with "that subdivision," the new amendment of Government Code
19 Section 53071.5 shown above would fully implement the Commission's recommendation, and
20 would conform to the nonsubstantive intent of the reorganization of the deadly weapon statutes.

21 As a substantive matter, however, it might make sense to refer to the entirety of new Section
22 16700 (or perhaps even additional statutory material on imitation firearms) in Government Code
23 Section 53071.5. The intent of Section 53071.5 seems to be to establish that the Legislature has
24 occupied the field of manufacture, sale, and possession of imitation firearms, such that any
25 regulations (as opposed to statutes) on the subject are invalid.

26 That intent might be better-effectuated by amending Section 53071.5 as follows, instead of as
27 shown above:

28 53071.5. By the enforcement of this section, the Legislature occupies the whole field of
29 regulation of the manufacture, sale, or possession of imitation firearms, as defined in
30 ~~subdivision (a) of Section 16700 of the Penal Code~~, and that section and any other sections on
31 the subject shall preempt and be exclusive of all regulations relating to the manufacture, sale,
32 or possession of imitation firearms, including regulations governing the manufacture, sale, or
33 possession of BB devices and air rifles described in Section 16250 of the Penal Code.

34 **Comment.** Section 53071.5 is amended to more clearly express its intent.

35 Comments on whether to follow this approach would be helpful.

36 **Staff Note.** The staff is not sure why the version of Government Code Section 53071.5 that
37 existed when the Commission prepared its report referred only to Penal Code Section 12550, not
38 to any of the other statutes relating to imitation firearms. There are a number of such statutes. See
39 Penal Code Sections 417.4 and 12553-12556 (to be continued in new Penal Code Sections
40 16700(b), 20150-20180); see also Penal Code Sections 12551-12552 (to be continued in new
41 Penal Code Sections 19910-19915), relating to BB devices. It would have been risky to try to
42 address this point in the Commission's reorganization of the deadly weapon statutes. Now,
43 however, it may be appropriate for the Commission to deal with it.

44 **Penal Code § 166 (amended). Contempt of court**

45 SEC. _____. Section 166 of the Penal Code is amended to read:

46 166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty
47 of any contempt of court, of any of the following kinds, is guilty of a
48 misdemeanor:

1 (1) Disorderly, contemptuous, or insolent behavior committed during the sitting
2 of any court of justice, in the immediate view and presence of the court, and
3 directly tending to interrupt its proceedings or to impair the respect due to its
4 authority.

5 (2) Behavior as specified in paragraph (1) committed in the presence of any
6 referee, while actually engaged in any trial or hearing, pursuant to the order of any
7 court, or in the presence of any jury while actually sitting for the trial of a cause,
8 or upon any inquest or other proceedings authorized by law.

9 (3) Any breach of the peace, noise, or other disturbance directly tending to
10 interrupt the proceedings of any court.

11 (4) Willful disobedience of the terms as written of any process or court order or
12 out-of-state court order, lawfully issued by any court, including orders pending
13 trial.

14 (5) Resistance willfully offered by any person to the lawful order or process of
15 any court.

16 (6) The contumacious and unlawful refusal of any person to be sworn as a
17 witness or, when so sworn, the like refusal to answer any material question.

18 (7) The publication of a false or grossly inaccurate report of the proceedings of
19 any court.

20 (8) Presenting to any court having power to pass sentence upon any prisoner
21 under conviction, or to any member of the court, any affidavit or testimony or
22 representation of any kind, verbal or written, in aggravation or mitigation of the
23 punishment to be imposed upon the prisoner, except as provided in this code.

24 (9) Willful disobedience of the terms of any injunction that restrains the
25 activities of a criminal street gang or any of its members, lawfully issued by any
26 court, including an order pending trial.

27 (b)(1) Any person who is guilty of contempt of court under paragraph (4) of
28 subdivision (a) by willfully contacting a victim by telephone or mail, or directly,
29 and who has been previously convicted of a violation of Section 646.9 shall be
30 punished by imprisonment in a county jail for not more than one year, by a fine of
31 five thousand dollars (\$5,000), or by both that fine and imprisonment.

32 (2) For the purposes of sentencing under this subdivision, each contact shall
33 constitute a separate violation of this subdivision.

34 (3) The present incarceration of a person who makes contact with a victim in
35 violation of paragraph (1) is not a defense to a violation of this subdivision.

36 (c)(1) Notwithstanding paragraph (4) of subdivision (a), any willful and
37 knowing violation of any protective order or stay-away court order issued pursuant
38 to Section 136.2, in a pending criminal proceeding involving domestic violence, as
39 defined in Section 13700, or issued as a condition of probation after a conviction
40 in a criminal proceeding involving domestic violence, as defined in Section 13700,
41 or elder or dependent adult abuse, as defined in Section 368, or that is an order
42 described in paragraph (3), shall constitute contempt of court, a misdemeanor,
43 punishable by imprisonment in a county jail for not more than one year, by a fine

1 of not more than one thousand dollars (\$1,000), or by both that imprisonment and
2 fine.

3 (2) If a violation of paragraph (1) results in a physical injury, the person shall be
4 imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is
5 imposed, or the sentence is suspended.

6 (3) Paragraphs (1) and (2) apply to the following court orders:

7 (A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

8 (B) An order excluding one party from the family dwelling or from the dwelling
9 of the other.

10 (C) An order enjoining a party from specified behavior that the court determined
11 was necessary to effectuate the orders described in paragraph (1).

12 (4) A second or subsequent conviction for a violation of any order described in
13 paragraph (1) occurring within seven years of a prior conviction for a violation of
14 any of those orders and involving an act of violence or “a credible threat” of
15 violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by
16 imprisonment in a county jail not to exceed one year, or in the state prison for 16
17 months or two or three years.

18 (5) The prosecuting agency of each county shall have the primary responsibility
19 for the enforcement of the orders described in paragraph (1).

20 (d)(1) A person who owns, possesses, purchases, or receives a firearm knowing
21 he or she is prohibited from doing so by the provisions of a protective order as
22 defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section
23 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the
24 provisions of ~~subdivision (g) of Section 12021~~ Section 29825.

25 (2) A person subject to a protective order described in paragraph (1) shall not be
26 prosecuted under this section for owning, possessing, purchasing, or receiving a
27 firearm to the extent that firearm is granted an exemption pursuant to subdivision
28 (h) of Section 6389 of the Family Code.

29 (e)(1) If probation is granted upon conviction of a violation of subdivision (c),
30 the court shall impose probation consistent with Section 1203.097 of the Penal
31 Code.

32 (2) If probation is granted upon conviction of a violation of subdivision (c), the
33 conditions of probation may include, in lieu of a fine, one or both of the following
34 requirements:

35 (A) That the defendant make payments to a battered women’s shelter, up to a
36 maximum of one thousand dollars (\$1,000).

37 (B) That the defendant provide restitution to reimburse the victim for reasonable
38 costs of counseling and other reasonable expenses that the court finds are the
39 direct result of the defendant’s offense.

40 (3) For any order to pay a fine, make payments to a battered women’s shelter, or
41 pay restitution as a condition of probation under this subdivision or subdivision
42 (c), the court shall make a determination of the defendant’s ability to pay. In no
43 event shall any order to make payments to a battered women’s shelter be made if it

1 would impair the ability of the defendant to pay direct restitution to the victim or
2 court-ordered child support.

3 (4) If the injury to a married person is caused in whole or in part by the criminal
4 acts of his or her spouse in violation of subdivision (c), the community property
5 may not be used to discharge the liability of the offending spouse for restitution to
6 the injured spouse required by Section 1203.04, as operative on or before August
7 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured
8 spouse and dependents required by this subdivision, until all separate property of
9 the offending spouse is exhausted.

10 (5) Any person violating any order described in subdivision (c) may be punished
11 for any substantive offenses described under Section 136.1 or 646.9. No finding of
12 contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9.
13 However, any person held in contempt for a violation of subdivision (c) shall be
14 entitled to credit for any punishment imposed as a result of that violation against
15 any sentence imposed upon conviction of an offense described in Section 136.1 or
16 646.9. Any conviction or acquittal for any substantive offense under Section 136.1
17 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the
18 same act.

19 **Comment.** Subdivision (d) of Section 166 is amended to reflect nonsubstantive reorganization
20 of the statutes governing control of deadly weapons.

21 **Note.** A similar amendment of Section 166 was recommended by the Commission in
22 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
23 217, 1105-09 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 44. That amendment did not
24 become law, because it was chaptered out by another amendment of the same section. See AB
25 2632 (Davis), 2010 Cal. Stat. ch. 677, § 1; see also Gov't Code § 9605 (specifying how to resolve
26 conflict between two bills that amend same section).

27 **Penal Code § 171c (amended). Punishment for bringing or possessing loaded firearm within**
28 **State Capitol and other specified locations**

29 SEC. _____. Section 171c of the Penal Code is amended to read:

30 171c. (a)(1) Any person who brings a loaded firearm into, or possesses a loaded
31 firearm within, the State Capitol, any legislative office, any office of the Governor
32 or other constitutional officer, or any hearing room in which any committee of the
33 Senate or Assembly is conducting a hearing, or upon the grounds of the State
34 Capitol, which is bounded by 10th, L, 15th, and N Streets in the City of
35 Sacramento, shall be punished by imprisonment in a county jail for a period of not
36 more than one year, a fine of not more than one thousand dollars (\$1,000), or both
37 such imprisonment and fine, or by imprisonment in the state prison.

38 (2) Any person who brings or possesses, within the State Capitol, any legislative
39 office, any hearing room in which any committee of the Senate or Assembly is
40 conducting a hearing, the Legislative Office Building at 1020 N Street in the City
41 of Sacramento, or upon the grounds of the State Capitol, which is bounded by
42 10th, L, 15th, and N Streets in the City of Sacramento, any of the following, is
43 guilty of a misdemeanor punishable by imprisonment in a county jail for a period

1 not to exceed one year, or by a fine not exceeding one thousand dollars (\$1,000),
2 or by both that fine and imprisonment, if the area is posted with a statement
3 providing reasonable notice that prosecution may result from possession of any of
4 these items:

5 (A) Any firearm.

6 (B) Any deadly weapon described in ~~Section 653k or 12020~~ Section 21510 or in
7 any provision listed in Section 16590.

8 (C) Any knife with a blade length in excess of four inches, the blade of which is
9 fixed or is capable of being fixed in an unguarded position by the use of one or
10 two hands.

11 (D) Any unauthorized tear gas weapon.

12 (E) Any stun gun, as defined in Section 244.5.

13 (F) Any instrument that expels a metallic projectile, such as a BB or pellet,
14 through the force of air pressure, CO₂ pressure, or spring action, or any spot
15 marker gun or paint gun.

16 (G) Any ammunition as defined in ~~Section 12316~~ Sections 16150 and 16650.

17 (H) Any explosive as defined in Section 12000 of the Health and Safety Code.

18 (b) Subdivision (a) shall not apply to, or affect, any of the following:

19 (1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with
20 Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry
21 concealed weapons as described in ~~subdivision (a) of Section 12027~~ Article 2
22 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6,
23 a full-time paid peace officer of another state or the federal government who is
24 carrying out official duties while in California, or any person summoned by any of
25 these officers to assist in making arrests or preserving the peace while he or she is
26 actually engaged in assisting the officer.

27 (2) A person holding a valid license to carry the firearm pursuant to ~~Article 3~~
28 ~~(commencing with Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4
29 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, and who has
30 permission granted by the Chief Sergeants at Arms of the State Assembly and the
31 State Senate to possess a concealed weapon upon the premises described in
32 subdivision (a).

33 (3) A person who has permission granted by the Chief Sergeants at Arms of the
34 State Assembly and the State Senate to possess a weapon upon the premises
35 described in subdivision (a).

36 (c)(1) Nothing in this section shall preclude prosecution under ~~Sections 12021~~
37 ~~and 12021.1~~ Chapter 2 (commencing with Section 29800) and Chapter 3
38 (commencing with Section 29900) of Division 9 of Title 4 of Part 6, Section 8100
39 or 8103 of the Welfare and Institutions Code, or any other law with a penalty
40 greater than is set forth in this section.

41 (2) The provisions of this section are cumulative, and shall not be construed as
42 restricting the application of any other law. However, an act or omission

1 punishable in different ways by different provisions of law shall not be punished
2 under more than one provision.

3 **Comment.** Section 171c is amended to reflect nonsubstantive reorganization of the statutes
4 governing control of deadly weapons.

5 **Note.** An amendment of former Section 171c (1976 Cal. Stat. ch. 1139, § 129) was
6 recommended by the Commission in *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
7 38 Cal. L. Revision Comm'n Reports 217, 1112-13 (2009), and was enacted as 2010 Cal. Stat. ch.
8 178, § 46. That amendment did not become law, because it was chaptered out by another bill,
9 which repealed the same provision. See AB 2668 (Galgiani), 2010 Cal. Stat. ch. 689, § 1; see also
10 Gov't Code § 9605 (specifying how to resolve conflict between two bills that affect same
11 section).

12 AB 2668 also enacted a new Section 171c. See 2010 Cal. Stat. ch. 689, § 2. In several places,
13 that new provision cross-refers to material that will be relocated when the bill implementing the
14 Commission's nonsubstantive reorganization of the deadly weapon statutes (SB 1080 (Committee
15 on Public Safety), 2010 Cal. Stat. ch. 711) becomes operative on January 1, 2012.

16 Those cross-references need to be revised to reflect the relocation of the pertinent material. The
17 amendment shown above would accomplish this.

18 **Staff Note.** In drafting the above amendment, the staff noticed what might be a mistake in
19 new Section 171c. Specifically, subdivision (c)(1) says: "Nothing in this section shall preclude
20 prosecution under Sections 12021 and 12021.1, Section 8100 or 8103 of the Welfare and
21 Institutions Code, or any other law with a penalty greater than is set forth in this section."
22 (Emphasis added.) Instead of referring to "prosecution under Sections 12021 and 12021.1," it
23 would seem to make more sense to refer to "prosecution under Section 12021 or 12021.1,"
24 because those provisions establish different offenses.

25 If that assessment is correct, then the above amendment should be revised accordingly.
26 Specifically, subdivision (c)(1) should refer to prosecution under "Chapter 2 (commencing with
27 Section 29800) or Chapter 3 ...," instead of "Chapter 2 (commencing with Section 29800) and
28 Chapter 3 ..."

29 The staff encourages input on whether to revise the amendment in this manner.

30 **Penal Code § 171.7 (amended). Weapons at public transit facility**

31 SEC. _____. Section 171.7 of the Penal Code is amended to read:

32 171.7. (a) For purposes of this section:

33 (1) "Public transit facility" means any land, building, or equipment, or any
34 interest therein, including any station on a public transportation route, to which
35 access is controlled in a manner consistent with the public transit authority's
36 security plan, whether or not the operation thereof produces revenue, that has as its
37 primary purpose the operation of a public transit system or the providing of
38 services to the passengers of a public transit system. A public transit system
39 includes the vehicles used in the system, including, but not limited to, motor
40 vehicles, streetcars, trackless trolleys, buses, light rail systems, rapid transit
41 systems, subways, trains, or jitneys, that transport members of the public for hire.

42 (2) "Sterile area" means any portion of a public transit facility that is generally
43 controlled in a manner consistent with the public transit authority's security plan.

44 (3) "Firearm" has the same meaning as specified in ~~Section 12001~~ subdivision
45 (a) of Section 16520.

1 (b) It is unlawful for any person to knowingly possess within any sterile area of
2 a public transit facility any of the following, if the sterile area is posted with a
3 statement providing reasonable notice that prosecution may result from possession
4 of these items:

5 (1) Any firearm.

6 (2) Any imitation firearm as defined in Section 417.4.

7 (3) Any instrument that expels a metallic projectile, such as a BB or pellet,
8 through the force of air pressure, CO₂ pressure, or spring action, or any spot
9 marker gun or paint gun.

10 (4) Any metal military practice hand grenade.

11 (5) Any metal replica hand grenade.

12 (6) Any plastic replica hand grenade.

13 (7) Any unauthorized tear gas weapon.

14 (8) Any undetectable knife, as described in Section ~~12001.1~~ 17290.

15 (c)(1) Subdivision (b) shall not apply to, or affect, any of the following:

16 (A) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with
17 Section 830) of Title 3 of Part 2.

18 (B) A retired peace officer with authorization to carry concealed weapons as
19 described in ~~subdivision (a) of Section 12027~~ Article 2 (commencing with Section
20 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

21 (C) A full-time paid peace officer of another state or the federal government
22 who is carrying out official duties while in California.

23 (D) A qualified law enforcement officer of another state or the federal
24 government, as permitted under the Law Enforcement Officers Safety Act
25 pursuant to Section 926B or 926C of Title 18 of the United States Code.

26 (E) Any person summoned by any of the officers listed in subparagraphs (A) to
27 (C), inclusive, to assist in making arrests or preserving the peace while he or she is
28 actually engaged in assisting the officer.

29 (F) A person who is responsible for the security of the public transit system and
30 who has been authorized by the public transit authority's security coordinator, in
31 writing, to possess a weapon specified in subdivision (b).

32 (2) Paragraph (1) of subdivision (b) does not apply to or affect a person who is
33 exempt from the prohibition against carrying a handgun pursuant to Section ~~12025~~
34 25400 if the carrying of that handgun is in accordance with the terms and
35 conditions of the exemption specified in ~~Section 12027~~ Article 2 (commencing
36 with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 or Sections
37 25450 to 25475, inclusive.

38 (3) Paragraph (7) of subdivision (b) shall not apply to or affect the possession of
39 a tear gas weapon when possession is permitted pursuant to ~~Chapter 4~~
40 (commencing with Section 12401) of Title 2 of Part 4 Division 11 (commencing
41 with Section 22810) of Title 3 of Part 6.

1 (d) A violation of this section is punishable by imprisonment in a county jail for
2 a period not exceeding six months, or by a fine not exceeding one thousand dollars
3 (\$1,000), or by both that fine and imprisonment.

4 (e) The provisions of this section are cumulative, and shall not be construed as
5 restricting the application of any other law. However, an act or omission that is
6 punishable in different ways by this and any other provision of law shall not be
7 punished under more than one provision.

8 (f) This section does not prevent prosecution under any other provision of law
9 that may provide a greater punishment.

10 (g) This section shall be interpreted so as to be consistent with Section 926A of
11 Title 18 of the United States Code.

12 **Comment.** Section 171.7 is amended to reflect nonsubstantive reorganization of the statutes
13 governing control of deadly weapons.

14 **Note.** Section 171.7 was added to the Penal Code by AB 2324 (Perez), 2010 Cal. Stat. ch.
15 675, § 1. In several places, this new provision cross-refers to material that will be relocated when
16 the bill implementing the Commission’s nonsubstantive reorganization of the deadly weapon
17 statutes (SB 1080 (Committee on Public Safety), 2010 Cal. Stat. ch. 711) becomes operative on
18 January 1, 2012.

19 Those cross-references need to be revised to reflect the relocation of the pertinent material. The
20 amendment shown above would accomplish this.

21 **Staff Note.** In drafting the above amendment, the staff spotted two issues:

22 (1) Section 171.7(a)(3) says that “firearm” has “the same meaning as specified in Section
23 12001.” That statement is unclear, because Section 12001 includes multiple definitions of
24 “firearm”: a general definition in subdivision (b), plus other definitional rules in
25 subdivisions (c)-(e), which apply only to specified code sections. In drafting the above
26 amendment, we assumed that Section 171.7(a)(3) is intended to refer to the general
27 definition in Section 12001(b). That definition will be continued in Section 16520(a),
28 operative January 1, 2012. The other definitional rules for “firearm” from Section 12001
29 will be continued in Section 16520(b)-(d). We encourage comment on whether it is
30 necessary to refer to any or all of those rules in Section 171.7(a)(3).

31 (2) Section 171.7(c)(1)(B) says that subdivision (b) shall not apply to, or affect, a “retired
32 peace officer with authorization to carry concealed weapons as described in subdivision
33 (a) of Section 12027.” On January 1, 2012, Section 12027(a) will be repealed and
34 continued in Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of
35 new Part 6 of the Penal Code. Thus, the above amendment would revise Section
36 171.7(c)(1)(B) to say that subdivision (b) shall not apply to, or affect, a “retired peace
37 officer with authorization to carry concealed weapons as described in Article 2
38 (commencing with Section 25450) of Chapter 2 of Division 5 of Part 6.” That cross-
39 reference correction is straightforward.

40 However, Section 171.7(c)(2) further provides that subdivision (b)(1) shall not apply
41 to, or affect, a “person who is exempt from the prohibition against carrying a handgun
42 pursuant to Section 12025 if the carrying of that handgun is in accordance with the terms
43 and conditions of the exemption specified in Section 12027.” In perhaps an excess of
44 caution, the above amendment would replace the reference to Section 12027 with a
45 reference to “Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of
46 Title 4 of Part 6 or Sections 25450 to 25475, inclusive.”

47 Should this be simplified to refer only to “Sections 25450 to 25475, inclusive”? The
48 reference to “Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of

1 Title 4 of Part 6” may be unnecessary, because Section 171.7(c)(1)(B) would already say
2 that subdivision (b) shall not apply to, or affect, a “retired peace officer with
3 authorization to carry concealed weapons as described in Article 2 (commencing with
4 Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.”

5 The staff encourages input on these issues.

6 **Penal Code § 186.22, as it reads in 2010 Cal. Stat. ch. 256, § 2 (amended). Promotion,**
7 **furtherance, or assistance in felonious conduct by gang member**

8 SEC. _____. Section 186.22 of the Penal Code, as it reads in Section 2 of Chapter
9 256 of the Statutes of 2010, is amended to read:

10 186.22. (a) Any person who actively participates in any criminal street gang
11 with knowledge that its members engage in or have engaged in a pattern of
12 criminal gang activity, and who willfully promotes, furthers, or assists in any
13 felonious criminal conduct by members of that gang, shall be punished by
14 imprisonment in a county jail for a period not to exceed one year, or by
15 imprisonment in the state prison for 16 months, or two or three years.

16 (b)(1) Except as provided in paragraphs (4) and (5), any person who is convicted
17 of a felony committed for the benefit of, at the direction of, or in association with
18 any criminal street gang, with the specific intent to promote, further, or assist in
19 any criminal conduct by gang members, shall, upon conviction of that felony, in
20 addition and consecutive to the punishment prescribed for the felony or attempted
21 felony of which he or she has been convicted, be punished as follows:

22 (A) Except as provided in subparagraphs (B) and (C), the person shall be
23 punished by an additional term of two, three, or four years at the court’s
24 discretion.

25 (B) If the felony is a serious felony, as defined in subdivision (c) of Section
26 1192.7, the person shall be punished by an additional term of five years.

27 (C) If the felony is a violent felony, as defined in subdivision (c) of Section
28 667.5, the person shall be punished by an additional term of 10 years.

29 (2) If the underlying felony described in paragraph (1) is committed on the
30 grounds of, or within 1,000 feet of, a public or private elementary, vocational,
31 junior high, or high school, during hours in which the facility is open for classes or
32 school-related programs or when minors are using the facility, that fact shall be a
33 circumstance in aggravation of the crime in imposing a term under paragraph (1).

34 (3) The court shall order the imposition of the middle term of the sentence
35 enhancement, unless there are circumstances in aggravation or mitigation. The
36 court shall state the reasons for its choice of sentencing enhancements on the
37 record at the time of the sentencing.

38 (4) Any person who is convicted of a felony enumerated in this paragraph
39 committed for the benefit of, at the direction of, or in association with any criminal
40 street gang, with the specific intent to promote, further, or assist in any criminal
41 conduct by gang members, shall, upon conviction of that felony, be sentenced to

1 an indeterminate term of life imprisonment with a minimum term of the
2 indeterminate sentence calculated as the greater of:

3 (A) The term determined by the court pursuant to Section 1170 for the
4 underlying conviction, including any enhancement applicable under Chapter 4.5
5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by
6 Section 3046, if the felony is any of the offenses enumerated in subparagraph (B)
7 or (C) of this paragraph.

8 (B) Imprisonment in the state prison for 15 years, if the felony is a home
9 invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision
10 (a) of Section 213; carjacking, as defined in Section 215; a felony violation of
11 Section 246; or a violation of Section 12022.55.

12 (C) Imprisonment in the state prison for seven years, if the felony is extortion, as
13 defined in Section 519; or threats to victims and witnesses, as defined in Section
14 136.1.

15 (5) Except as provided in paragraph (4), any person who violates this
16 subdivision in the commission of a felony punishable by imprisonment in the state
17 prison for life shall not be paroled until a minimum of 15 calendar years have been
18 served.

19 (c) If the court grants probation or suspends the execution of sentence imposed
20 upon the defendant for a violation of subdivision (a), or in cases involving a true
21 finding of the enhancement enumerated in subdivision (b), the court shall require
22 that the defendant serve a minimum of 180 days in a county jail as a condition
23 thereof.

24 (d) Any person who is convicted of a public offense punishable as a felony or a
25 misdemeanor, which is committed for the benefit of, at the direction of, or in
26 association with any criminal street gang, with the specific intent to promote,
27 further, or assist in any criminal conduct by gang members, shall be punished by
28 imprisonment in the county jail not to exceed one year, or by imprisonment in the
29 state prison for one, two, or three years, provided that any person sentenced to
30 imprisonment in the county jail shall be imprisoned for a period not to exceed one
31 year, but not less than 180 days, and shall not be eligible for release upon
32 completion of sentence, parole, or any other basis, until he or she has served 180
33 days. If the court grants probation or suspends the execution of sentence imposed
34 upon the defendant, it shall require as a condition thereof that the defendant serve
35 180 days in a county jail.

36 (e) As used in this chapter, “pattern of criminal gang activity” means the
37 commission of, attempted commission of, conspiracy to commit, or solicitation of,
38 sustained juvenile petition for, or conviction of two or more of the following
39 offenses, provided at least one of these offenses occurred after the effective date of
40 this chapter and the last of those offenses occurred within three years after a prior
41 offense, and the offenses were committed on separate occasions, or by two or
42 more persons:

1 (1) Assault with a deadly weapon or by means of force likely to produce great
2 bodily injury, as defined in Section 245.

3 (2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8
4 of Part 1.

5 (3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing
6 with Section 187) of Title 8 of Part 1.

7 (4) The sale, possession for sale, transportation, manufacture, offer for sale, or
8 offer to manufacture controlled substances as defined in Sections 11054, 11055,
9 11056, 11057, and 11058 of the Health and Safety Code.

10 (5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in
11 Section 246.

12 (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as
13 defined in subdivisions (a) and (b) of Section ~~42034~~ 26100.

14 (7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

15 (8) The intimidation of witnesses and victims, as defined in Section 136.1.

16 (9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

17 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

18 (11) Burglary, as defined in Section 459.

19 (12) Rape, as defined in Section 261.

20 (13) Looting, as defined in Section 463.

21 (14) Money laundering, as defined in Section 186.10.

22 (15) Kidnapping, as defined in Section 207.

23 (16) Mayhem, as defined in Section 203.

24 (17) Aggravated mayhem, as defined in Section 205.

25 (18) Torture, as defined in Section 206.

26 (19) Felony extortion, as defined in Sections 518 and 520.

27 (20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section
28 594.

29 (21) Carjacking, as defined in Section 215.

30 (22) The sale, delivery, or transfer of a firearm, as defined in ~~Section 12072~~
31 Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4
32 of Part 6.

33 (23) Possession of a pistol, revolver, or other firearm capable of being concealed
34 upon the person in violation of ~~paragraph (1) of subdivision (a) of Section 12101~~
35 Section 29610.

36 (24) Threats to commit crimes resulting in death or great bodily injury, as
37 defined in Section 422.

38 (25) Theft and unlawful taking or driving of a vehicle, as defined in Section
39 10851 of the Vehicle Code.

40 (26) Felony theft of an access card or account information, as defined in Section
41 484e.

42 (27) Counterfeiting, designing, using, or attempting to use an access card, as
43 defined in Section 484f.

1 (28) Felony fraudulent use of an access card or account information, as defined
2 in Section 484g.

3 (29) Unlawful use of personal identifying information to obtain credit, goods,
4 services, or medical information, as defined in Section 530.5.

5 (30) Wrongfully obtaining Department of Motor Vehicles documentation, as
6 defined in Section 529.7.

7 (31) Prohibited possession of a firearm in violation of ~~Section 12024~~ Chapter 2
8 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

9 (32) Carrying a concealed firearm in violation of Section ~~12025~~ 25400.

10 (33) Carrying a loaded firearm in violation of Section ~~12034~~ 25850.

11 (f) As used in this chapter, “criminal street gang” means any ongoing
12 organization, association, or group of three or more persons, whether formal or
13 informal, having as one of its primary activities the commission of one or more of
14 the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
15 inclusive, of subdivision (e), having a common name or common identifying sign
16 or symbol, and whose members individually or collectively engage in or have
17 engaged in a pattern of criminal gang activity.

18 (g) Notwithstanding any other law, the court may strike the additional
19 punishment for the enhancements provided in this section or refuse to impose the
20 minimum jail sentence for misdemeanors in an unusual case where the interests of
21 justice would best be served, if the court specifies on the record and enters into the
22 minutes the circumstances indicating that the interests of justice would best be
23 served by that disposition.

24 (h) Notwithstanding any other provision of law, for each person committed to
25 the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or
26 (b) of this section, the offense shall be deemed one for which the state shall pay
27 the rate of 100 percent of the per capita institutional cost of the Division of
28 Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

29 (i) In order to secure a conviction or sustain a juvenile petition, pursuant to
30 subdivision (a) it is not necessary for the prosecution to prove that the person
31 devotes all, or a substantial part, of his or her time or efforts to the criminal street
32 gang, nor is it necessary to prove that the person is a member of the criminal street
33 gang. Active participation in the criminal street gang is all that is required.

34 (j) A pattern of gang activity may be shown by the commission of one or more
35 of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision
36 (e), and the commission of one or more of the offenses enumerated in paragraphs
37 (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern of
38 gang activity cannot be established solely by proof of commission of offenses
39 enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

40 (k) This section shall become operative on January 1, 2012.

41 **Comment.** Subdivision (e) of Section 186.22 (as it reads in by Section 2 of Chapter 256 of the
42 Statutes of 2010) is amended to reflect nonsubstantive reorganization of the statutes governing
43 control of deadly weapons.

1 **Note.** A similar amendment of Section 186.22 (as added by 2009 Cal. Stat. ch. 171, § 2) was
2 recommended by the Commission in *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
3 38 Cal. L. Revision Comm'n Reports 217, 1117-23 (2009), and was enacted as 2010 Cal. Stat. ch.
4 178, § 49. That amendment did not become law, because it was chaptered out by another
5 amendment of the same section. See AB 2263 (Yamada), 2010 Cal. Stat. ch. 256, § 2; see also
6 Gov't Code § 9605 (specifying how to resolve conflict between two bills that amend same
7 section).

8 **Penal Code § 273.6, as it reads in 2010 Cal. Stat. ch. 178, § 55 (amended). Violation of**
9 **protective order and other orders**

10 SEC. _____. Section 273.6 of the Penal Code, as it reads in Section 55 of Chapter
11 178 of the Statutes of 2010, is amended to read:

12 273.6. (a) Any intentional and knowing violation of a protective order, as
13 defined in Section 6218 of the Family Code, or of an order issued pursuant to
14 Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section
15 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a
16 fine of not more than one thousand dollars (\$1,000), or by imprisonment in a
17 county jail for not more than one year, or by both that fine and imprisonment.

18 (b) In the event of a violation of subdivision (a) that results in physical injury,
19 the person shall be punished by a fine of not more than two thousand dollars
20 (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more
21 than one year, or by both that fine and imprisonment. However, if the person is
22 imprisoned in a county jail for at least 48 hours, the court may, in the interest of
23 justice and for reasons stated on the record, reduce or eliminate the 30-day
24 minimum imprisonment required by this subdivision. In determining whether to
25 reduce or eliminate the minimum imprisonment pursuant to this subdivision, the
26 court shall consider the seriousness of the facts before the court, whether there are
27 additional allegations of a violation of the order during the pendency of the case
28 before the court, the probability of future violations, the safety of the victim, and
29 whether the defendant has successfully completed or is making progress with
30 counseling.

31 (c) Subdivisions (a) and (b) shall apply to the following court orders:

32 (1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

33 (2) An order excluding one party from the family dwelling or from the dwelling
34 of the other.

35 (3) An order enjoining a party from specified behavior that the court determined
36 was necessary to effectuate the order described in subdivision (a).

37 (4) Any order issued by another state that is recognized under Part 5
38 (commencing with Section 6400) of Division 10 of the Family Code.

39 (d) A subsequent conviction for a violation of an order described in subdivision
40 (a), occurring within seven years of a prior conviction for a violation of an order
41 described in subdivision (a) and involving an act of violence or "a credible threat"
42 of violence, as defined in subdivision (c) of Section 139, is punishable by
43 imprisonment in a county jail not to exceed one year, or in the state prison.

1 (e) In the event of a subsequent conviction for a violation of an order described
2 in subdivision (a) for an act occurring within one year of a prior conviction for a
3 violation of an order described in subdivision (a) that results in physical injury to a
4 victim, the person shall be punished by a fine of not more than two thousand
5 dollars (\$2,000), or by imprisonment in a county jail for not less than six months
6 nor more than one year, by both that fine and imprisonment, or by imprisonment
7 in the state prison. However, if the person is imprisoned in a county jail for at least
8 30 days, the court may, in the interest of justice and for reasons stated in the
9 record, reduce or eliminate the six-month minimum imprisonment required by this
10 subdivision. In determining whether to reduce or eliminate the minimum
11 imprisonment pursuant to this subdivision, the court shall consider the seriousness
12 of the facts before the court, whether there are additional allegations of a violation
13 of the order during the pendency of the case before the court, the probability of
14 future violations, the safety of the victim, and whether the defendant has
15 successfully completed or is making progress with counseling.

16 (f) The prosecuting agency of each county shall have the primary responsibility
17 for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

18 (g)(1) Every person who owns, possesses, purchases, or receives a firearm
19 knowing he or she is prohibited from doing so by the provisions of a protective
20 order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or
21 Section ~~527.6 or 527.8~~ 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or
22 Section 15657.03 of the Welfare and Institutions Code, shall be punished under
23 Section 29825.

24 (2) Every person subject to a protective order described in paragraph (1) shall
25 not be prosecuted under this section for owning, possessing, purchasing, or
26 receiving a firearm to the extent that firearm is granted an exemption pursuant to
27 subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h)
28 of Section 6389 of the Family Code.

29 (h) If probation is granted upon conviction of a violation of subdivision (a), (b),
30 (c), (d), or (e), the court shall impose probation consistent with Section 1203.097,
31 and the conditions of probation may include, in lieu of a fine, one or both of the
32 following requirements:

33 (1) That the defendant make payments to a battered women's shelter or to a
34 shelter for abused elder persons or dependent adults, up to a maximum of five
35 thousand dollars (\$5,000), pursuant to Section 1203.097.

36 (2) That the defendant reimburse the victim for reasonable costs of counseling
37 and other reasonable expenses that the court finds are the direct result of the
38 defendant's offense.

39 (i) For any order to pay a fine, make payments to a battered women's shelter, or
40 pay restitution as a condition of probation under subdivision (e), the court shall
41 make a determination of the defendant's ability to pay. In no event shall any order
42 to make payments to a battered women's shelter be made if it would impair the
43 ability of the defendant to pay direct restitution to the victim or court-ordered child

1 support. Where the injury to a married person is caused in whole or in part by the
2 criminal acts of his or her spouse in violation of this section, the community
3 property may not be used to discharge the liability of the offending spouse for
4 restitution to the injured spouse, required by Section 1203.04, as operative on or
5 before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to
6 the injured spouse and dependents, required by this section, until all separate
7 property of the offending spouse is exhausted.

8 **Comment.** Subdivision (g) of Section 273.6 is amended to incorporate language that was
9 chaptered out due to a conflict between two bills that amended the section in 2010. See SB 1062
10 (Strickland), 2010 Cal. Stat. ch. 709, §§ 10, 28; SB 1115 (Committee on Public Safety), 2010 Cal.
11 Stat. ch. 178, §§ 55, 108; Gov't Code § 9605 (specifying how to resolve conflict between two
12 bills that amend same section).

13 **Note.** An amendment of Section 273.6 was recommended by the Commission in
14 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
15 217, 1131-35 (2009). A bill including that amendment was enacted in 2010, and will become
16 operative on January 1, 2012. See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch.
17 178, §§ 55, 107.

18 Another bill amending Section 273.6 was also enacted in 2010. See SB 1062 (Strickland), 2010
19 Cal. Stat. ch. 709, § 10. That bill included a subordination clause, which was more
20 comprehensive than the subordination clause in the bill with the Commission's amendment.
21 *Compare* 2010 Cal. Stat. ch. 709, § 28, *with* 2010 Cal. Stat. ch. 178, § 108. Consequently, when
22 the bill with the Commission's amendment becomes operative, the changes made by the other bill
23 would be nullified pursuant to Government Code Section 9605, which specifies how to resolve a
24 conflict between two bills that amend the same section.

25 The above amendment of Section 273.6 would correct that problem.

26 **Penal Code § 626.95, as it reads in 2010 Cal. Stat. ch. 178, § 60 (amended). Firearm at**
27 **playground or youth center**

28 SEC. _____. Section 626.95 of the Penal Code, as it reads in Section 60 of
29 Chapter 178 of the Statutes of 2010, is amended to read:

30 626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or
31 subdivision (b), of Section 417, or Section 25400 or 25850, upon the grounds of or
32 within a playground, or a public or private youth center during hours in which the
33 facility is open for business, classes, or school-related programs, or at any time
34 when minors are using the facility, knowing that he or she is on or within those
35 grounds, shall be punished by imprisonment in the state prison for one, two, or
36 three years, or in a county jail not exceeding one year.

37 (b) State and local authorities are encouraged to cause signs to be posted around
38 playgrounds and youth centers giving warning of prohibition of the possession of
39 firearms upon the grounds of or within playgrounds or youth centers.

40 (c) For purposes of this section, the following definitions shall apply:

41 (1) "Playground" means any park or recreational area specifically designed to be
42 used by children that has play equipment installed, including public grounds
43 designed for athletic activities such as baseball, football, soccer, or basketball, or
44 any similar facility located on public or private school grounds, or on city or
45 county parks.

1 (2) “Youth center” means any public or private facility that is used to host
2 recreational or social activities for minors while minors are present.

3 (d) It is the Legislature’s intent that only an actual conviction of a felony of one
4 of the offenses specified in this section would subject the person to firearms
5 disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C.
6 Sec. 921).

7 **Comment.** Subdivision (a) of Section 626.95 is amended to correct a technical error.

8 **Note.** In its recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
9 38 Cal. L. Revision Comm’n Reports 217 (2009), the Commission recommended the following
10 amendment of Penal Code Section 626.95:

11 626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or
12 subdivision (b), of Section 417, or Section ~~12025 or 12031~~ 25400 or 25850, upon the grounds
13 of or within a playground

14 See *id.* at 1145-46.

15 That amendment was included in the lengthy bill consisting of conforming revisions, but with
16 a technical error. The bill struck out “Section 12025 or 12031” instead of striking out “12025 or
17 12031.” See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 60. To avoid the
18 expense of amending such a lengthy bill, that error was not corrected in the legislative process.

19 When the amendment from the bill becomes operative on January 1, 2012, Section 626.95(a)
20 will refer to a violation of “paragraph (2) of subdivision (a), or subdivision (b), of Section 417, or
21 25400 or 25850” That could create confusion about whether the cross-reference is limited to
22 Section 25400(a)(2) & (b) and 25850(a)(2) & (b), or encompasses the entirety of those sections.

23 That problem should be corrected, by reinserting the word “Section” before “25400 or
24 25850,” as shown above.

25 **Penal Code § 626.10, as it reads in 2010 Cal. Stat. ch. 178, § 55 (amended). Bringing or**
26 **possessing weapons on school grounds**

27 SEC. _____. Section 626.10 of the Penal Code, as it reads in Section 55 of
28 Chapter 178 of the Statutes of 2010, is amended to read:

29 626.10. (a)(1) Any person, except a duly appointed peace officer as defined in
30 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid
31 peace officer of another state or the federal government who is carrying out
32 official duties while in this state, a person summoned by any officer to assist in
33 making arrests or preserving the peace while the person is actually engaged in
34 assisting any officer, or a member of the military forces of this state or the United
35 States who is engaged in the performance of his or her duties, who brings or
36 possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches,
37 folding knife with a blade that locks into place, razor with an unguarded blade,
38 taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument
39 that expels a metallic projectile, such as a BB or a pellet, through the force of air
40 pressure, CO₂ pressure, or spring action, or any spot marker gun, upon the grounds
41 of, or within, any public or private school providing instruction in kindergarten or
42 any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by
43 imprisonment in a county jail not exceeding one year, or by imprisonment in the
44 state prison.

1 (2) Any person, except a duly appointed peace officer as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer
3 of another state or the federal government who is carrying out official duties while
4 in this state, a person summoned by any officer to assist in making arrests or
5 preserving the peace while the person is actually engaged in assisting any officer,
6 or a member of the military forces of this state or the United States who is engaged
7 in the performance of his or her duties, who brings or possesses a razor blade or a
8 box cutter upon the grounds of, or within, any public or private school providing
9 instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public
10 offense, punishable by imprisonment in a county jail not exceeding one year.

11 (b) Any person, except a duly appointed peace officer as defined in Chapter 4.5
12 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer
13 of another state or the federal government who is carrying out official duties while
14 in this state, a person summoned by any officer to assist in making arrests or
15 preserving the peace while the person is actually engaged in assisting any officer,
16 or a member of the military forces of this state or the United States who is engaged
17 in the performance of his or her duties, who brings or possesses any dirk, dagger,
18 ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of,
19 or within, any private university, the University of California, the California State
20 University, or the California Community Colleges is guilty of a public offense,
21 punishable by imprisonment in a county jail not exceeding one year, or by
22 imprisonment in the state prison.

23 (c) Subdivisions (a) and (b) do not apply to any person who brings or possesses
24 a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a
25 razor blade, or a box cutter upon the grounds of, or within, a public or private
26 school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or
27 any private university, state university, or community college at the direction of a
28 faculty member of the private university, state university, or community college,
29 or a certificated or classified employee of the school for use in a private university,
30 state university, community college, or school-sponsored activity or class.

31 (d) Subdivisions (a) and (b) do not apply to any person who brings or possesses
32 an ice pick, a knife having a blade longer than 2½ inches, a razor with an
33 unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a
34 public or private school providing instruction in kindergarten or any of grades 1 to
35 12, inclusive, or any private university, state university, or community college for
36 a lawful purpose within the scope of the person's employment.

37 (e) Subdivision (b) does not apply to any person who brings or possesses an ice
38 pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or
39 within, any private university, state university, or community college for lawful
40 use in or around a residence or residential facility located upon those grounds or
41 for lawful use in food preparation or consumption.

42 (f) Subdivision (a) does not apply to any person who brings an instrument that
43 expels a metallic projectile, such as a BB or a pellet, through the force of air

1 pressure, CO₂ pressure, or spring action, or any spot marker gun, or any razor
2 blade or box cutter upon the grounds of, or within, a public or private school
3 providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the
4 person has the written permission of the school principal or his or her designee.

5 (g) Any certificated or classified employee or school peace officer of a public or
6 private school providing instruction in kindergarten or any of grades 1 to 12,
7 inclusive, may seize any of the weapons described in subdivision (a), and any
8 certificated or classified employee or school peace officer of any private
9 university, state university, or community college may seize any of the weapons
10 described in subdivision (b), from the possession of any person upon the grounds
11 of, or within, the school if he or she knows, or has reasonable cause to know, the
12 person is prohibited from bringing or possessing the weapon upon the grounds of,
13 or within, the school.

14 (h) As used in this section, “dirk” or “dagger” means a knife or other instrument
15 with or without a handguard that is capable of ready use as a stabbing weapon that
16 may inflict great bodily injury or death.

17 (i) Any person who, without the written permission of the college or university
18 president or chancellor or his or her designee, brings or possesses a less lethal
19 weapon, as defined in Section 16780, or a stun gun, as defined in Section 17230,
20 upon the grounds of, or within, a public or private college or university campus is
21 guilty of a misdemeanor.

22 **Comment.** Subdivisions (a)(1), (f), and (i) of Section 626.10, as it reads in 2010 Cal. Stat. ch.
23 178, § 55, are amended to incorporate language that was chaptered out due to a conflict between
24 two bills that amended the section in 2010. See SB 1115 (Committee on Public Safety), 2010 Cal.
25 Stat. ch. 178, §§ 61, 108; SB 1330 (Committee on Judiciary), 2010 Cal. Stat. ch. 328, §§ 157,
26 266; Gov’t Code § 9605 (specifying how to resolve conflict between two bills that amend same
27 section).

28 **Note.** An amendment of Section 626.10 was recommended by the Commission in
29 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports
30 217, 1146-49 (2009). A bill including that amendment was enacted in 2010, and will become
31 operative on January 1, 2012. See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch.
32 178, §§ 61, 107.

33 Another bill amending Section 626.10 was also enacted in 2010. See SB 1330 (Committee on
34 Judiciary), 2010 Cal. Stat. ch. 328, § 157. That bill included a subordination clause, which was
35 more comprehensive than the subordination clause in the bill with the Commission’s amendment.
36 *Compare* 2010 Cal. Stat. ch. 178, § 108, *with* 2010 Cal. Stat. ch. 328, § 266. Consequently, when
37 the bill with the Commission’s amendment becomes operative, the changes made by the other bill
38 (comma insertions) would be nullified pursuant to Government Code Section 9605, which
39 specifies how to resolve a conflict between two bills that amend the same section.

40 The above amendment of Section 626.10 would correct that problem.

41 **Penal Code § 629.52 (amended). Ex parte order authorizing interception of specified**
42 **communications**

43 SEC. _____. Section 629.52 of the Penal Code is amended to read:

44 629.52. Upon application made under Section 629.50, the judge may enter an ex
45 parte order, as requested or modified, authorizing interception of wire or electronic

1 communications initially intercepted within the territorial jurisdiction of the court
2 in which the judge is sitting, if the judge determines, on the basis of the facts
3 submitted by the applicant, all of the following:

4 (a) There is probable cause to believe that an individual is committing, has
5 committed, or is about to commit, one of the following offenses:

6 (1) Importation, possession for sale, transportation, manufacture, or sale of
7 controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6,
8 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with
9 respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their
10 precursors or analogs where the substance exceeds 10 gallons by liquid volume or
11 three pounds of solid substance by weight.

12 (2) Murder, solicitation to commit murder, the commission of a felony involving
13 a destructive device in violation of Section ~~12303, 12303.1, 12303.2, 12303.3,~~
14 ~~12303.6, 12308, 12309, 12310, or 12312~~ 18710, 18715, 18720, 18725, 18730,
15 18740, 18745, 18750, or 18755, or a violation of Section 209.

16 (3) Any felony violation of Section 186.22.

17 (4) Any felony violation of Section 11418, relating to weapons of mass
18 destruction, Section 11418.5, relating to threats to use weapons of mass
19 destruction, or Section 11419, relating to restricted biological agents.

20 (5) An attempt or conspiracy to commit any of the above-mentioned crimes.

21 (b) There is probable cause to believe that particular communications
22 concerning the illegal activities will be obtained through that interception,
23 including, but not limited to, communications that may be utilized for locating or
24 rescuing a kidnap victim.

25 (c) There is probable cause to believe that the facilities from which, or the place
26 where, the wire or electronic communications are to be intercepted are being used,
27 or are about to be used, in connection with the commission of the offense, or are
28 leased to, listed in the name of, or commonly used by the person whose
29 communications are to be intercepted.

30 (d) Normal investigative procedures have been tried and have failed or
31 reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

32 **Comment.** Subdivision (a) of Section 629.52 is amended to reflect nonsubstantive
33 reorganization of the statutes governing control of deadly weapons.

34 **Note.** A similar amendment of Section 629.52 was recommended by the Commission in
35 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
36 217, 1149-50 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 62. That amendment did not
37 become law, because it was chaptered out by another amendment of the same section. See SB
38 1428 (Pavley), 2010 Cal. Stat. ch. 707, § 3; see also Gov't Code § 9605 (specifying how to
39 resolve conflict between two bills that amend same section).

40 **Penal Code § 1203.4, as it reads in 2010 Cal. Stat. ch. 178, § 76 (amended). Dismissal of**
41 **information or accusation**

42 SEC. _____. Section 1203.4 of the Penal Code, as it reads in Section 76 of
43 Chapter 178 of the Statutes of 2010, is amended to read:

1 1203.4. (a) In any case in which a defendant has fulfilled the conditions of
2 probation for the entire period of probation, or has been discharged prior to the
3 termination of the period of probation, or in any other case in which a court, in its
4 discretion and the interests of justice, determines that a defendant should be
5 granted the relief available under this section, the defendant shall, at any time after
6 the termination of the period of probation, if he or she is not then serving a
7 sentence for any offense, on probation for any offense, or charged with the
8 commission of any offense, be permitted by the court to withdraw his or her plea
9 of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she
10 has been convicted after a plea of not guilty, the court shall set aside the verdict of
11 guilty; and, in either case, the court shall thereupon dismiss the accusations or
12 information against the defendant and except as noted below, he or she shall
13 thereafter be released from all penalties and disabilities resulting from the offense
14 of which he or she has been convicted, except as provided in Section 13555 of the
15 Vehicle Code. The probationer shall be informed, in his or her probation papers, of
16 this right and privilege and his or her right, if any, to petition for a certificate of
17 rehabilitation and pardon. The probationer may make the application and change
18 of plea in person or by attorney, or by the probation officer authorized in writing.
19 However, in any subsequent prosecution of the defendant for any other offense,
20 the prior conviction may be pleaded and proved and shall have the same effect as
21 if probation had not been granted or the accusation or information dismissed. The
22 order shall state, and the probationer shall be informed, that the order does not
23 relieve him or her of the obligation to disclose the conviction in response to any
24 direct question contained in any questionnaire or application for public office, for
25 licensure by any state or local agency, or for contracting with the California State
26 Lottery Commission.

27 Dismissal of an accusation or information pursuant to this section does not
28 permit a person to own, possess, or have in his or her custody or control any
29 firearm or prevent his or her conviction under Chapter 2 (commencing with
30 Section 29800) of Division 9 of Title 4 of Part 6.

31 Dismissal of an accusation or information underlying a conviction pursuant to
32 this section does not permit a person prohibited from holding public office as a
33 result of that conviction to hold public office.

34 This subdivision shall apply to all applications for relief under this section which
35 are filed on or after November 23, 1970.

36 (b) Subdivision (a) of this section does not apply to any misdemeanor that is
37 within the provisions of ~~subdivision (b) of Section 42001~~ Section 42002.1 of the
38 Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288,
39 subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289,
40 any felony conviction pursuant to subdivision (d) of Section 261.5, or to any
41 infraction.

42 (c)(1) Except as provided in paragraph (2), subdivision (a) does not apply to a
43 person who receives a notice to appear or is otherwise charged with a violation of

1 an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the
2 Vehicle Code.

3 (2) If a defendant who was convicted of a violation listed in paragraph (1)
4 petitions the court, the court in its discretion and in the interests of justice, may
5 order the relief provided pursuant to subdivision (a) to that defendant.

6 (d) A person who petitions for a change of plea or setting aside of a verdict
7 under this section may be required to reimburse the court for the actual costs of
8 services rendered, whether or not the petition is granted and the records are sealed
9 or expunged, at a rate to be determined by the court not to exceed one hundred
10 fifty dollars (\$150), and to reimburse the county for the actual costs of services
11 rendered, whether or not the petition is granted and the records are sealed or
12 expunged, at a rate to be determined by the county board of supervisors not to
13 exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual
14 costs of services rendered, whether or not the petition is granted and the records
15 are sealed or expunged, at a rate to be determined by the city council not to exceed
16 one hundred fifty dollars (\$150). Ability to make this reimbursement shall be
17 determined by the court using the standards set forth in paragraph (2) of
18 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
19 eligibility under this section. The court may order reimbursement in any case in
20 which the petitioner appears to have the ability to pay, without undue hardship, all
21 or any portion of the costs for services established pursuant to this subdivision.

22 (e) Relief shall not be granted under this section unless the prosecuting attorney
23 has been given 15 days' notice of the petition for relief. The probation officer shall
24 notify the prosecuting attorney when a petition is filed, pursuant to this section.

25 It shall be presumed that the prosecuting attorney has received notice if proof of
26 service is filed with the court.

27 (f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney
28 fails to appear and object to a petition for dismissal, the prosecuting attorney may
29 not move to set aside or otherwise appeal the grant of that petition.

30 (g) Notwithstanding the above provisions or any other provision of law, the
31 Governor shall have the right to pardon a person convicted of a violation of
32 subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a,
33 Section 288.5, or subdivision (j) of Section 289, if there are extraordinary
34 circumstances.

35 **Comment.** Subdivisions (a) and (b) of Section 1203.4, as it reads in 2010 Cal. Stat. ch. 178, §
36 76, are amended to incorporate language that was chaptered out due to a conflict between two
37 bills that amended the section in 2010. See SB 1115 (Committee on Public Safety), 2010 Cal.
38 Stat. ch. 178, §§ 76, 108; SB 1330 (Committee on Judiciary), 2010 Cal. Stat. ch. 328, §§ 166,
39 266; Gov't Code § 9605 (specifying how to resolve conflict between two bills that amend same
40 section).

41 **Note.** An amendment of Section 1203.4 was recommended by the Commission in
42 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
43 217, 1193-96 (2009). A bill including that amendment was enacted in 2010, and will become

1 operative on January 1, 2012. See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch.
2 178, §§ 76, 107.

3 Another bill amending Section 1203.4 was also enacted in 2010. See SB 1330 (Committee on
4 Judiciary), 2010 Cal. Stat. ch. 328, § 166. That bill included a subordination clause, which was
5 more comprehensive than the subordination clause in the bill with the Commission's amendment.
6 *Compare* 2010 Cal. Stat. ch. 178, § 108, *with* 2010 Cal. Stat. ch. 328, § 266. Consequently, when
7 the bill with the Commission's amendment becomes operative, the changes made by the other bill
8 would be nullified pursuant to Government Code Section 9605, which specifies how to resolve a
9 conflict between two bills that amend the same section.

10 The above amendment of Section 1203.4 would correct that problem.

11 **Penal Code § 1203.4a (amended). Withdrawal of plea to misdemeanor**

12 SEC. _____. Section 1203.4a of the Penal Code is amended to read:

13 1203.4a. (a) Every defendant convicted of a misdemeanor and not granted
14 probation, and every defendant convicted of an infraction, shall, at any time after
15 the lapse of one year from the date of pronouncement of judgment, if he or she has
16 fully complied with and performed the sentence of the court, is not then serving a
17 sentence for any offense and is not under charge of commission of any crime and
18 has, since the pronouncement of judgment, lived an honest and upright life and has
19 conformed to and obeyed the laws of the land, be permitted by the court to
20 withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty;
21 or if he or she has been convicted after a plea of not guilty, the court shall set aside
22 the verdict of guilty; and in either case the court shall thereupon dismiss the
23 accusatory pleading against the defendant, who shall thereafter be released from
24 all penalties and disabilities resulting from the offense of which he or she has been
25 convicted, except as provided in ~~Section 12021.1~~ Chapter 3 (commencing with
26 Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 13555 of
27 the Vehicle Code. The defendant shall be informed of the provisions of this
28 section, either orally or in writing, at the time he or she is sentenced. The
29 defendant may make an application and change of plea in person or by attorney, or
30 by the probation officer authorized in writing; provided, that in any subsequent
31 prosecution of the defendant for any other offense, the prior conviction may be
32 pleaded and proved and shall have the same effect as if relief had not been granted
33 pursuant to this section.

34 This subdivision applies to convictions which occurred before, as well as those
35 occurring after, the effective date of this section.

36 (b) Subdivision (a) does not apply to any misdemeanor falling within the
37 provisions of Section 42002.1 of the Vehicle Code, or to any infraction falling
38 within the provisions of Section 42001 of the Vehicle Code.

39 (c) A person who petitions for a dismissal of a charge under this section may be
40 required to reimburse the county and the court for the cost of services rendered at
41 a rate to be determined by the county board of supervisors for the county and by
42 the court for the court, not to exceed sixty dollars (\$60), and to reimburse any city
43 for the cost of services rendered at a rate to be determined by the city council not
44 to exceed sixty dollars (\$60). Ability to make this reimbursement shall be

1 determined by the court using the standards set forth in paragraph (2) of
2 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
3 eligibility under this section. The court may order reimbursement in any case in
4 which the petitioner appears to have the ability to pay, without undue hardship, all
5 or any portion of the cost for services established pursuant to this subdivision.

6 (d) A petition for dismissal of an infraction pursuant to this section shall be by
7 written declaration, except upon a showing of compelling need. Dismissal of an
8 infraction shall not be granted under this section unless the prosecuting attorney
9 has been given at least 15 days' notice of the petition for dismissal. It shall be
10 presumed that the prosecuting attorney has received notice if proof of service is
11 filed with the court.

12 (e) Any determination of amount made by a court under this section shall be
13 valid only if either (1) made under procedures adopted by the Judicial Council or
14 (2) approved by the Judicial Council.

15 **Comment.** Subdivision (a) of Section 1203.4a is amended to reflect nonsubstantive
16 reorganization of the statutes governing control of deadly weapons.

17 **Note.** A similar amendment of Section 1203.4a was recommended by the Commission in
18 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
19 217, 1196-98 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 77. That amendment did not
20 become law, because it was chaptered out by another amendment of the same section. See AB
21 2582 (Adams), 2010 Cal. Stat. ch. 99, § 1; see also Gov't Code § 9605 (specifying how to resolve
22 conflict between two bills that amend same section); 2010 Cal. Stat. ch. 178, § 108 (subordination
23 clause).

24 **Penal Code § 2933.5, as it reads in 2010 Cal. Stat. ch. 178, § 81 (amended). Persons ineligible**
25 **for credit on term of imprisonment**

26 SEC. _____. Section 2933.5 of the Penal Code, as it reads in Section 81 of
27 Chapter 178 of the Statutes of 2010, is amended to read:

28 2933.5. (a)(1) Notwithstanding any other law, every person who is convicted of
29 any felony offense listed in paragraph (2), and who previously has been convicted
30 two or more times, on charges separately brought and tried, and who previously
31 has served two or more separate prior prison terms, as defined in subdivision (g)
32 of Section 667.5, of any offense or offenses listed in paragraph (2), shall be
33 ineligible to earn credit on his or her term of imprisonment pursuant to this article.

34 (2) As used in this subdivision, "felony offense" includes any of the following:

35 (A) Murder, as defined in Sections 187 and 189.

36 (B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

37 (C) Mayhem as defined in Section 203.

38 (D) Aggravated mayhem, as defined in Section 205.

39 (E) Kidnapping, as defined in Section 207, 209, or 209.5.

40 (F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as
41 described in Section 244.

42 (G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
43 paragraph (1) or (4) of subdivision (a) of Section 262.

1 (H) Sodomy by means of force, violence, duress, menace or fear of immediate
2 and unlawful bodily injury on the victim or another person, as described in
3 subdivision (c) of Section 286.

4 (I) Sodomy while voluntarily acting in concert, as described in subdivision (d)
5 of Section 286.

6 (J) Lewd or lascivious acts on a child under the age of 14 years, as described in
7 subdivision (b) of Section 288.

8 (K) Oral copulation by means of force, violence, duress, menace, or fear of
9 immediate and unlawful bodily injury on the victim or another person, as
10 described in subdivision (c) of Section 288a.

11 (L) Continuous sexual abuse of a child, as described in Section 288.5.

12 (M) Sexual penetration, as described in subdivision (a) of Section 289.

13 (N) Exploding a destructive device or explosive with intent to injure, as
14 described in Section ~~12303.3~~ 18740, with intent to murder, as described in Section
15 18745, or resulting in great bodily injury or mayhem, as described in Section
16 18750.

17 (O) Any felony in which the defendant personally inflicted great bodily injury,
18 as provided in Section 12022.53 or 12022.7.

19 (b) A prior conviction of an offense listed in subdivision (a) shall include a
20 conviction in another jurisdiction for an offense which includes all of the elements
21 of the particular felony as defined under California law.

22 (c) This section shall apply whenever the present felony is committed on or after
23 the effective date of this section, regardless of the date of commission of the prior
24 offense or offenses resulting in credit-earning ineligibility.

25 (d) This section shall be in addition to, and shall not preclude the imposition of,
26 any applicable sentence enhancement terms, or probation ineligibility and habitual
27 offender provisions authorized under any other section.

28 **Comment.** Subdivision (a) of Section 2933.5 is amended to reflect nonsubstantive
29 reorganization of the statutes governing control of deadly weapons.

30 **Note.** In its recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
31 38 Cal. L. Revision Comm'n Reports 217 (2009), the Commission recommended the following
32 amendment of Penal Code Section 2933.5(a)(2)(N):

33 (N) Exploding a destructive device or explosive with intent to injure, as described in
34 Section ~~12303.3~~ 18740, with intent to murder, as described in Section ~~12308~~ 18745, or
35 resulting in great bodily injury or mayhem, as described in Section ~~12309~~ 18750.

36 See *id.* at 1217-19.

37 That amendment was included in the lengthy bill consisting of conforming revisions, but the
38 bill did not strike out “12303.3” and replace it with “18740” as recommended. See SB 1115
39 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 81. To avoid the expense of amending
40 such a lengthy bill, that problem was not corrected in the legislative process.

41 The problem should be corrected now, as shown above.

1 **Penal Code § 2962 (amended). Treatment by Department of Mental Health as parole**
2 **condition**

3 SEC. _____. Section 2962 of the Penal Code is amended to read:

4 2962. As a condition of parole, a prisoner who meets the following criteria shall
5 be required to be treated by the State Department of Mental Health, and the State
6 Department of Mental Health shall provide the necessary treatment:

7 (a) The prisoner has a severe mental disorder that is not in remission or cannot
8 be kept in remission without treatment.

9 The term “severe mental disorder” means an illness or disease or condition that
10 substantially impairs the person’s thought, perception of reality, emotional
11 process, or judgment; or which grossly impairs behavior; or that demonstrates
12 evidence of an acute brain syndrome for which prompt remission, in the absence
13 of treatment, is unlikely. The term “severe mental disorder” as used in this section
14 does not include a personality or adjustment disorder, epilepsy, mental retardation
15 or other developmental disabilities, or addiction to or abuse of intoxicating
16 substances.

17 The term “remission” means a finding that the overt signs and symptoms of the
18 severe mental disorder are controlled either by psychotropic medication or
19 psychosocial support. A person “cannot be kept in remission without treatment” if
20 during the year prior to the question being before the Board of Prison Terms or a
21 trial court, he or she has been in remission and he or she has been physically
22 violent, except in self-defense, or he or she has made a serious threat of substantial
23 physical harm upon the person of another so as to cause the target of the threat to
24 reasonably fear for his or her safety or the safety of his or her immediate family, or
25 he or she has intentionally caused property damage, or he or she has not
26 voluntarily followed the treatment plan. In determining if a person has voluntarily
27 followed the treatment plan, the standard shall be whether the person has acted as
28 a reasonable person would in following the treatment plan.

29 (b) The severe mental disorder was one of the causes of or was an aggravating
30 factor in the commission of a crime for which the prisoner was sentenced to
31 prison.

32 (c) The prisoner has been in treatment for the severe mental disorder for 90 days
33 or more within the year prior to the prisoner’s parole or release.

34 (d)(1) Prior to release on parole, the person in charge of treating the prisoner and
35 a practicing psychiatrist or psychologist from the State Department of Mental
36 Health have evaluated the prisoner at a facility of the Department of Corrections,
37 and a chief psychiatrist of the Department of Corrections has certified to the Board
38 of Prison Terms that the prisoner has a severe mental disorder, that the disorder is
39 not in remission, or cannot be kept in remission without treatment, that the severe
40 mental disorder was one of the causes or was an aggravating factor in the
41 prisoner’s criminal behavior, that the prisoner has been in treatment for the severe
42 mental disorder for 90 days or more within the year prior to his or her parole
43 release day, and that by reason of his or her severe mental disorder the prisoner

1 represents a substantial danger of physical harm to others. For prisoners being
2 treated by the State Department of Mental Health pursuant to Section 2684, the
3 certification shall be by a chief psychiatrist of the Department of Corrections, and
4 the evaluation shall be done at a state hospital by the person at the state hospital in
5 charge of treating the prisoner and a practicing psychiatrist or psychologist from
6 the Department of Corrections.

7 (2) If the professionals doing the evaluation pursuant to paragraph (1) do not
8 concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is
9 not in remission or cannot be kept in remission without treatment, or (C) that the
10 severe mental disorder was a cause of, or aggravated, the prisoner's criminal
11 behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison
12 Terms pursuant to this paragraph, then the Board of Prison Terms shall order a
13 further examination by two independent professionals, as provided for in Section
14 2978.

15 (3) If at least one of the independent professionals who evaluate the prisoner
16 pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the
17 issues described in paragraph (2), this subdivision shall be applicable to the
18 prisoner. The professionals appointed pursuant to Section 2978 shall inform the
19 prisoner that the purpose of their examination is not treatment but to determine if
20 the prisoner meets certain criteria to be involuntarily treated as a mentally
21 disordered offender. It is not required that the prisoner appreciate or understand
22 that information.

23 (e) The crime referred to in subdivision (b) meets both of the following criteria:

24 (1) The defendant received a determinate sentence pursuant to Section 1170 for
25 the crime.

26 (2) The crime is one of the following:

27 (A) Voluntary manslaughter.

28 (B) Mayhem.

29 (C) Kidnapping in violation of Section 207.

30 (D) Any robbery wherein it was charged and proved that the defendant
31 personally used a deadly or dangerous weapon, as provided in subdivision (b) of
32 Section 12022, in the commission of that robbery.

33 (E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and
34 proved that the defendant personally used a deadly or dangerous weapon, as
35 provided in subdivision (b) of Section 12022, in the commission of the carjacking.

36 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
37 paragraph (1) or (4) of subdivision (a) of Section 262.

38 (G) Sodomy by force, violence, duress, menace, or fear of immediate and
39 unlawful bodily injury on the victim or another person.

40 (H) Oral copulation by force, violence, duress, menace, or fear of immediate and
41 unlawful bodily injury on the victim or another person.

42 (I) Lewd acts on a child under the age of 14 years in violation of Section 288.

43 (J) Continuous sexual abuse in violation of Section 288.5.

1 (K) The offense described in subdivision (a) of Section 289 where the act was
2 accomplished against the victim's will by force, violence, duress, menace, or fear
3 of immediate and unlawful bodily injury on the victim or another person.

4 (L) Arson in violation of subdivision (a) of Section 451, or arson in violation of
5 any other provision of Section 451 or in violation of Section 455 where the act
6 posed a substantial danger of physical harm to others.

7 (M) Any felony in which the defendant used a firearm which use was charged
8 and proved as provided in Section 12022.5, 12022.53, or 12022.55.

9 (N) A violation of Section ~~12308~~ 18745.

10 (O) Attempted murder.

11 (P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the
12 prisoner used force or violence, or caused serious bodily injury as defined in
13 paragraph (4) of subdivision (f) of Section 243.

14 (Q) A crime in which the perpetrator expressly or impliedly threatened another
15 with the use of force or violence likely to produce substantial physical harm in
16 such a manner that a reasonable person would believe and expect that the force or
17 violence would be used. For purposes of this subparagraph, substantial physical
18 harm shall not require proof that the threatened act was likely to cause great or
19 serious bodily injury.

20 (f) As used in this chapter, "substantial danger of physical harm" does not
21 require proof of a recent overt act.

22 **Comment.** Subdivision (e) of Section 2962 is amended to reflect nonsubstantive
23 reorganization of the statutes governing control of deadly weapons.

24 **Note.** A similar amendment of Section 2962 was recommended by the Commission in
25 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
26 217, 1219-23 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 82. That amendment did not
27 become law, because it was chaptered out by another amendment of the same section. See AB
28 1844 (Fletcher), 2010 Cal. Stat. ch. 219, § 18; see also Gov't Code § 9605 (specifying how to
29 resolve conflict between two bills that amend same section).

30 **Penal Code § 11105 (amended). State and federal summary criminal history information**
31 **furnished by Department of Justice**

32 SEC. _____. Section 11105 of the Penal Code is amended to read:

33 11105. (a)(1) The Department of Justice shall maintain state summary criminal
34 history information.

35 (2) As used in this section:

36 (A) "State summary criminal history information" means the master record of
37 information compiled by the Attorney General pertaining to the identification and
38 criminal history of any person, such as name, date of birth, physical description,
39 fingerprints, photographs, date of arrests, arresting agencies and booking numbers,
40 charges, dispositions, and similar data about the person.

41 (B) "State summary criminal history information" does not refer to records and
42 data compiled by criminal justice agencies other than the Attorney General, nor
43 does it refer to records of complaints to or investigations conducted by, or records

1 of intelligence information or security procedures of, the office of the Attorney
2 General and the Department of Justice.

3 (b) The Attorney General shall furnish state summary criminal history
4 information to any of the following, if needed in the course of their duties,
5 provided that when information is furnished to assist an agency, officer, or official
6 of state or local government, a public utility, or any other entity, in fulfilling
7 employment, certification, or licensing duties, Chapter 1321 of the Statutes of
8 1974 and Section 432.7 of the Labor Code shall apply:

9 (1) The courts of the state.

10 (2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and
11 (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of
12 Section 830.5, and subdivision (a) of Section 830.31.

13 (3) District attorneys of the state.

14 (4) Prosecuting city attorneys of any city within the state.

15 (5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a,
16 or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or
17 Section 11571 of the Health and Safety Code.

18 (6) Probation officers of the state.

19 (7) Parole officers of the state.

20 (8) A public defender or attorney of record when representing a person in
21 proceedings upon a petition for a certificate of rehabilitation and pardon pursuant
22 to Section 4852.08.

23 (9) A public defender or attorney of record when representing a person in a
24 criminal case, or parole revocation or revocation extension proceeding, and if
25 authorized access by statutory or decisional law.

26 (10) Any agency, officer, or official of the state if the criminal history
27 information is required to implement a statute or regulation that expressly refers to
28 specific criminal conduct applicable to the subject person of the state summary
29 criminal history information, and contains requirements or exclusions, or both,
30 expressly based upon that specified criminal conduct. The agency, officer, or
31 official of the state authorized by this paragraph to receive state summary criminal
32 history information may also transmit fingerprint images and related information
33 to the Department of Justice to be transmitted to the Federal Bureau of
34 Investigation.

35 (11) Any city or county, city and county, district, or any officer or official
36 thereof if access is needed in order to assist that agency, officer, or official in
37 fulfilling employment, certification, or licensing duties, and if the access is
38 specifically authorized by the city council, board of supervisors, or governing
39 board of the city, county, or district if the criminal history information is required
40 to implement a statute, ordinance, or regulation that expressly refers to specific
41 criminal conduct applicable to the subject person of the state summary criminal
42 history information, and contains requirements or exclusions, or both, expressly
43 based upon that specified criminal conduct. The city or county, city and county,

1 district, or the officer or official thereof authorized by this paragraph may also
2 transmit fingerprint images and related information to the Department of Justice to
3 be transmitted to the Federal Bureau of Investigation.

4 (12) The subject of the state summary criminal history information under
5 procedures established under Article 5 (commencing with Section 11120).

6 (13) Any person or entity when access is expressly authorized by statute if the
7 criminal history information is required to implement a statute or regulation that
8 expressly refers to specific criminal conduct applicable to the subject person of the
9 state summary criminal history information, and contains requirements or
10 exclusions, or both, expressly based upon that specified criminal conduct.

11 (14) Health officers of a city, county, city and county, or district when in the
12 performance of their official duties enforcing Section 120175 of the Health and
13 Safety Code.

14 (15) Any managing or supervising correctional officer of a county jail or other
15 county correctional facility.

16 (16) Any humane society, or society for the prevention of cruelty to animals, for
17 the specific purpose of complying with Section 14502 of the Corporations Code
18 for the appointment of humane officers.

19 (17) Local child support agencies established by Section 17304 of the Family
20 Code. When a local child support agency closes a support enforcement case
21 containing summary criminal history information, the agency shall delete or purge
22 from the file and destroy any documents or information concerning or arising from
23 offenses for or of which the parent has been arrested, charged, or convicted, other
24 than for offenses related to the parent's having failed to provide support for minor
25 children, consistent with the requirements of Section 17531 of the Family Code.

26 (18) County child welfare agency personnel who have been delegated the
27 authority of county probation officers to access state summary criminal history
28 information pursuant to Section 272 of the Welfare and Institutions Code for the
29 purposes specified in Section 16504.5 of the Welfare and Institutions Code.
30 Information from criminal history records provided pursuant to this subdivision
31 shall not be used for any purposes other than those specified in this section and
32 Section 16504.5 of the Welfare and Institutions Code. When an agency obtains
33 records obtained both on the basis of name checks and fingerprint checks, final
34 placement decisions shall be based only on the records obtained pursuant to the
35 fingerprint check.

36 (19) The court of a tribe, or court of a consortium of tribes, that has entered into
37 an agreement with the state pursuant to Section 10553.1 of the Welfare and
38 Institutions Code. This information may be used only for the purposes specified in
39 Section 16504.5 of the Welfare and Institutions Code and for tribal approval or
40 tribal licensing of foster care or adoptive homes. Article 6 (commencing with
41 Section 11140) shall apply to officers, members, and employees of a tribal court
42 receiving criminal record offender information pursuant to this section.

1 (20) Child welfare agency personnel of a tribe or consortium of tribes that has
2 entered into an agreement with the state pursuant to Section 10553.1 of the
3 Welfare and Institutions Code and to whom the state has delegated duties under
4 paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions
5 Code. The purposes for use of the information shall be for the purposes specified
6 in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or
7 tribal licensing of foster care or adoptive homes. When an agency obtains records
8 on the basis of name checks and fingerprint checks, final placement decisions shall
9 be based only on the records obtained pursuant to the fingerprint check. Article 6
10 (commencing with Section 11140) shall apply to child welfare agency personnel
11 receiving criminal record offender information pursuant to this section.

12 (21) An officer providing conservatorship investigations pursuant to Sections
13 5351, 5354, and 5356 of the Welfare and Institutions Code.

14 (22) A court investigator providing investigations or reviews in conservatorships
15 pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

16 (23) A person authorized to conduct a guardianship investigation pursuant to
17 Section 1513 of the Probate Code.

18 (24) A humane officer pursuant to Section 14502 of the Corporations Code for
19 the purposes of performing his or her duties.

20 (c) The Attorney General may furnish state summary criminal history
21 information and, when specifically authorized by this subdivision, federal level
22 criminal history information upon a showing of a compelling need to any of the
23 following, provided that when information is furnished to assist an agency, officer,
24 or official of state or local government, a public utility, or any other entity in
25 fulfilling employment, certification, or licensing duties, Chapter 1321 of the
26 Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

27 (1) Any public utility, as defined in Section 216 of the Public Utilities Code, that
28 operates a nuclear energy facility when access is needed in order to assist in
29 employing persons to work at the facility, provided that, if the Attorney General
30 supplies the data, he or she shall furnish a copy of the data to the person to whom
31 the data relates.

32 (2) To a peace officer of the state other than those included in subdivision (b).

33 (3) To an illegal dumping enforcement officer as defined in subdivision (j) of
34 Section 830.7.

35 (4) To a peace officer of another country.

36 (5) To public officers, other than peace officers, of the United States, other
37 states, or possessions or territories of the United States, provided that access to
38 records similar to state summary criminal history information is expressly
39 authorized by a statute of the United States, other states, or possessions or
40 territories of the United States if the information is needed for the performance of
41 their official duties.

1 (6) To any person when disclosure is requested by a probation, parole, or peace
2 officer with the consent of the subject of the state summary criminal history
3 information and for purposes of furthering the rehabilitation of the subject.

4 (7) The courts of the United States, other states, or territories or possessions of
5 the United States.

6 (8) Peace officers of the United States, other states, or territories or possessions
7 of the United States.

8 (9) To any individual who is the subject of the record requested if needed in
9 conjunction with an application to enter the United States or any foreign nation.

10 (10)(A) Any public utility, as defined in Section 216 of the Public Utilities
11 Code, or any cable corporation as defined in subparagraph (B), if receipt of
12 criminal history information is needed in order to assist in employing current or
13 prospective employees, contract employees, or subcontract employees who, in the
14 course of their employment may be seeking entrance to private residences or
15 adjacent grounds. The information provided shall be limited to the record of
16 convictions and any arrest for which the person is released on bail or on his or her
17 own recognizance pending trial.

18 If the Attorney General supplies the data pursuant to this paragraph, the
19 Attorney General shall furnish a copy of the data to the current or prospective
20 employee to whom the data relates.

21 Any information obtained from the state summary criminal history is
22 confidential and the receiving public utility or cable corporation shall not disclose
23 its contents, other than for the purpose for which it was acquired. The state
24 summary criminal history information in the possession of the public utility or
25 cable corporation and all copies made from it shall be destroyed not more than 30
26 days after employment or promotion or transfer is denied or granted, except for
27 those cases where a current or prospective employee is out on bail or on his or her
28 own recognizance pending trial, in which case the state summary criminal history
29 information and all copies shall be destroyed not more than 30 days after the case
30 is resolved.

31 A violation of this paragraph is a misdemeanor, and shall give the current or
32 prospective employee who is injured by the violation a cause of action against the
33 public utility or cable corporation to recover damages proximately caused by the
34 violations. Any public utility's or cable corporation's request for state summary
35 criminal history information for purposes of employing current or prospective
36 employees who may be seeking entrance to private residences or adjacent grounds
37 in the course of their employment shall be deemed a "compelling need" as
38 required to be shown in this subdivision.

39 Nothing in this section shall be construed as imposing any duty upon public
40 utilities or cable corporations to request state summary criminal history
41 information on any current or prospective employees.

42 (B) For purposes of this paragraph, "cable corporation" means any corporation
43 or firm that transmits or provides television, computer, or telephone services by

1 cable, digital, fiber optic, satellite, or comparable technology to subscribers for a
2 fee.

3 (C) Requests for federal level criminal history information received by the
4 Department of Justice from entities authorized pursuant to subparagraph (A) shall
5 be forwarded to the Federal Bureau of Investigation by the Department of Justice.
6 Federal level criminal history information received or compiled by the Department
7 of Justice may then be disseminated to the entities referenced in subparagraph (A),
8 as authorized by law.

9 (D)(i) Authority for a cable corporation to request state or federal level criminal
10 history information under this paragraph shall commence July 1, 2005.

11 (ii) Authority for a public utility to request federal level criminal history
12 information under this paragraph shall commence July 1, 2005.

13 (11) To any campus of the California State University or the University of
14 California, or any four year college or university accredited by a regional
15 accreditation organization approved by the United States Department of
16 Education, if needed in conjunction with an application for admission by a
17 convicted felon to any special education program for convicted felons, including,
18 but not limited to, university alternatives and halfway houses. Only conviction
19 information shall be furnished. The college or university may require the
20 convicted felon to be fingerprinted, and any inquiry to the department under this
21 section shall include the convicted felon's fingerprints and any other information
22 specified by the department.

23 (12) To any foreign government, if requested by the individual who is the
24 subject of the record requested, if needed in conjunction with the individual's
25 application to adopt a minor child who is a citizen of that foreign nation. Requests
26 for information pursuant to this paragraph shall be in accordance with the process
27 described in Sections 11122 to 11124, inclusive. The response shall be provided to
28 the foreign government or its designee and to the individual who requested the
29 information.

30 (d) Whenever an authorized request for state summary criminal history
31 information pertains to a person whose fingerprints are on file with the
32 Department of Justice and the department has no criminal history of that person,
33 and the information is to be used for employment, licensing, or certification
34 purposes, the fingerprint card accompanying the request for information, if any,
35 may be stamped "no criminal record" and returned to the person or entity making
36 the request.

37 (e) Whenever state summary criminal history information is furnished as the
38 result of an application and is to be used for employment, licensing, or
39 certification purposes, the Department of Justice may charge the person or entity
40 making the request a fee that it determines to be sufficient to reimburse the
41 department for the cost of furnishing the information. In addition, the Department
42 of Justice may add a surcharge to the fee to fund maintenance and improvements
43 to the systems from which the information is obtained. Notwithstanding any other

1 law, any person or entity required to pay a fee to the department for information
2 received under this section may charge the applicant a fee sufficient to reimburse
3 the person or entity for this expense. All moneys received by the department
4 pursuant to this section, Sections 11105.3 and ~~12054~~ 26190 of the Penal Code, and
5 Section 13588 of the Education Code shall be deposited in a special account in the
6 General Fund to be available for expenditure by the department to offset costs
7 incurred pursuant to those sections and for maintenance and improvements to the
8 systems from which the information is obtained upon appropriation by the
9 Legislature.

10 (f) Whenever there is a conflict, the processing of criminal fingerprints and
11 fingerprints of applicants for security guard or alarm agent registrations or
12 firearms qualification permits submitted pursuant to Section 7583.9, 7583.23,
13 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the
14 processing of other applicant fingerprints.

15 (g) It is not a violation of this section to disseminate statistical or research
16 information obtained from a record, provided that the identity of the subject of the
17 record is not disclosed.

18 (h) It is not a violation of this section to include information obtained from a
19 record in (1) a transcript or record of a judicial or administrative proceeding or (2)
20 any other public record if the inclusion of the information in the public record is
21 authorized by a court, statute, or decisional law.

22 (i) Notwithstanding any other law, the Department of Justice or any state or
23 local law enforcement agency may require the submission of fingerprints for the
24 purpose of conducting summary criminal history information checks that are
25 authorized by law.

26 (j) The state summary criminal history information shall include any finding of
27 mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of
28 Title 10 of Part 2 arising out of a complaint charging a felony offense specified in
29 Section 290.

30 (k)(1) This subdivision shall apply whenever state or federal summary criminal
31 history information is furnished by the Department of Justice as the result of an
32 application by an authorized agency or organization and the information is to be
33 used for peace officer employment or certification purposes. As used in this
34 subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section
35 830) of Title 3 of Part 2.

36 (2) Notwithstanding any other provision of law, whenever state summary
37 criminal history information is furnished pursuant to paragraph (1), the
38 Department of Justice shall disseminate the following information:

39 (A) Every conviction rendered against the applicant.

40 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
41 whether the applicant is incarcerated or has been released on bail or on his or her
42 own recognizance pending trial.

1 (C) Every arrest or detention, except for an arrest or detention resulting in an
2 exoneration, provided however that where the records of the Department of Justice
3 do not contain a disposition for the arrest, the Department of Justice first makes a
4 genuine effort to determine the disposition of the arrest.

5 (D) Every successful diversion.

6 (E) Every date and agency name associated with all retained peace officer or
7 nonsworn law enforcement agency employee preemployment criminal offender
8 record information search requests.

9 (l)(1) This subdivision shall apply whenever state or federal summary criminal
10 history information is furnished by the Department of Justice as the result of an
11 application by a criminal justice agency or organization as defined in Section
12 13101 of the Penal Code, and the information is to be used for criminal justice
13 employment, licensing, or certification purposes.

14 (2) Notwithstanding any other provision of law, whenever state summary
15 criminal history information is furnished pursuant to paragraph (1), the
16 Department of Justice shall disseminate the following information:

17 (A) Every conviction rendered against the applicant.

18 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
19 whether the applicant is incarcerated or has been released on bail or on his or her
20 own recognizance pending trial.

21 (C) Every arrest for an offense for which the records of the Department of
22 Justice do not contain a disposition or did not result in a conviction, provided that
23 the Department of Justice first makes a genuine effort to determine the disposition
24 of the arrest. However, information concerning an arrest shall not be disclosed if
25 the records of the Department of Justice indicate or if the genuine effort reveals
26 that the subject was exonerated, successfully completed a diversion or deferred
27 entry of judgment program, or the arrest was deemed a detention.

28 (D) Every date and agency name associated with all retained peace officer or
29 nonsworn law enforcement agency employee preemployment criminal offender
30 record information search requests.

31 (m)(1) This subdivision shall apply whenever state or federal summary criminal
32 history information is furnished by the Department of Justice as the result of an
33 application by an authorized agency or organization pursuant to Section 1522,
34 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that
35 incorporates the criteria of any of those sections or this subdivision by reference,
36 and the information is to be used for employment, licensing, or certification
37 purposes.

38 (2) Notwithstanding any other provision of law, whenever state summary
39 criminal history information is furnished pursuant to paragraph (1), the
40 Department of Justice shall disseminate the following information:

41 (A) Every conviction of an offense rendered against the applicant.

1 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
2 whether the applicant is incarcerated or has been released on bail or on his or her
3 own recognizance pending trial.

4 (C) Every arrest for an offense for which the Department of Social Services is
5 required by paragraph (1) of subdivision (a) of Section 1522 of the Health and
6 Safety Code to determine if an applicant has been arrested. However, if the
7 records of the Department of Justice do not contain a disposition for an arrest, the
8 Department of Justice shall first make a genuine effort to determine the disposition
9 of the arrest.

10 (3) Notwithstanding the requirements of the sections referenced in paragraph (1)
11 of this subdivision, the Department of Justice shall not disseminate information
12 about an arrest subsequently deemed a detention or an arrest that resulted in either
13 the successful completion of a diversion program or exoneration.

14 (n)(1) This subdivision shall apply whenever state or federal summary criminal
15 history information, to be used for employment, licensing, or certification
16 purposes, is furnished by the Department of Justice as the result of an application
17 by an authorized agency, organization, or individual pursuant to any of the
18 following:

19 (A) Paragraph (9) of subdivision (c), when the information is to be used by a
20 cable corporation.

21 (B) Section 11105.3 or 11105.4.

22 (C) Section 15660 of the Welfare and Institutions Code.

23 (D) Any statute that incorporates the criteria of any of the statutory provisions
24 listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

25 (2) With the exception of applications submitted by transportation companies
26 authorized pursuant to Section 11105.3, and notwithstanding any other provision
27 of law, whenever state summary criminal history information is furnished pursuant
28 to paragraph (1), the Department of Justice shall disseminate the following
29 information:

30 (A) Every conviction rendered against the applicant for a violation or attempted
31 violation of any offense specified in subdivision (a) of Section 15660 of the
32 Welfare and Institutions Code. However, with the exception of those offenses for
33 which registration is required pursuant to Section 290, the Department of Justice
34 shall not disseminate information pursuant to this subdivision unless the
35 conviction occurred within 10 years of the date of the agency's request for
36 information or the conviction is over 10 years old but the subject of the request
37 was incarcerated within 10 years of the agency's request for information.

38 (B) Every arrest for a violation or attempted violation of an offense specified in
39 subdivision (a) of Section 15660 of the Welfare and Institutions Code for which
40 the applicant is presently awaiting trial, whether the applicant is incarcerated or
41 has been released on bail or on his or her own recognizance pending trial.

42 (o)(1) This subdivision shall apply whenever state or federal summary criminal
43 history information is furnished by the Department of Justice as the result of an

1 application by an authorized agency or organization pursuant to Section 261 or
2 550 of the Financial Code, or any statute that incorporates the criteria of either of
3 those sections or this subdivision by reference, and the information is to be used
4 for employment, licensing, or certification purposes.

5 (2) Notwithstanding any other provision of law, whenever state summary
6 criminal history information is furnished pursuant to paragraph (1), the
7 Department of Justice shall disseminate the following information:

8 (A) Every conviction rendered against the applicant for a violation or attempted
9 violation of any offense specified in Section 550 of the Financial Code.

10 (B) Every arrest for a violation or attempted violation of an offense specified in
11 Section 550 of the Financial Code for which the applicant is presently awaiting
12 trial, whether the applicant is incarcerated or has been released on bail or on his or
13 her own recognizance pending trial.

14 (p)(1) This subdivision shall apply whenever state or federal criminal history
15 information is furnished by the Department of Justice as the result of an
16 application by an agency, organization, or individual not defined in subdivision
17 (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to
18 Section 11105.3, or any statute that incorporates the criteria of that section or this
19 subdivision by reference, and the information is to be used for employment,
20 licensing, or certification purposes.

21 (2) Notwithstanding any other provisions of law, whenever state summary
22 criminal history information is furnished pursuant to paragraph (1), the
23 Department of Justice shall disseminate the following information:

24 (A) Every conviction rendered against the applicant.

25 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
26 whether the applicant is incarcerated or has been released on bail or on his or her
27 own recognizance pending trial.

28 (q) All agencies, organizations, or individuals defined in subdivisions (k), (l),
29 (m), (n), (o), and (p) may contract with the Department of Justice for subsequent
30 arrest notification pursuant to Section 11105.2. This subdivision shall not
31 supersede sections that mandate an agency, organization, or individual to contract
32 with the Department of Justice for subsequent arrest notification pursuant to
33 Section 11105.2.

34 (r) Nothing in this section shall be construed to mean that the Department of
35 Justice shall cease compliance with any other statutory notification requirements.

36 (s) The provisions of Section 50.12 of Title 28 of the Code of Federal
37 Regulations are to be followed in processing federal criminal history information.

38 **Comment.** Subdivision (e) of Section 11105 is amended to reflect nonsubstantive
39 reorganization of the statutes governing control of deadly weapons.

40 **Note.** A similar amendment of Section 11105 was recommended by the Commission in
41 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
42 217, 1228-43 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 87. That amendment did not
43 become law, because it was chaptered out by another amendment of the same section. See SB

1 1417 (Cox), 2010 Cal. Stat. ch. 652, § 13; see also Gov't Code § 9605 (specifying how to resolve
2 conflict between two bills that amend same section).

3 **Penal Code § 11105.03, as it reads in 2010 Cal. Stat. ch. 178, § 88 (amended). Retention of**
4 **records**

5 SEC. _____. Section 11105.03 of the Penal Code, as it reads in Section 88 of
6 Chapter 178 of the Statutes of 2010, is amended to read:

7 11105.03. (a) Subject to the requirements and conditions set forth in this section
8 and Section 11105, local law enforcement agencies are hereby authorized to
9 provide state criminal summary history information obtained through CLETS for
10 the purpose of screening prospective participants and prospective and current staff
11 of a regional, county, city, or other local public housing authority, at the request of
12 the chief executive officer of the authority or his or her designee, upon a showing
13 by that authority that the authority manages a Section 8 housing program pursuant
14 to federal law (U.S. Housing Act of 1937), or operates housing at which children
15 under the age of 18 years reside or operates housing for persons categorized as
16 aged, blind, or disabled.

17 (b) The following requirements shall apply to information released by local law
18 enforcement agencies pursuant to subdivision (a):

19 (1) Local law enforcement agencies shall not release any information unless it
20 relates to a conviction for a serious felony, as defined in subdivision (c) of Section
21 1192.7, a conviction for any offense punishable under Section 273.5, 422.6, 422.7,
22 422.75, 422.9, or 1170.75, or under Chapter 2 (commencing with Section 29800)
23 or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6,
24 or under any provision listed in Section 16590, a conviction under Section 273.6
25 that involves a violation of a protective order, as defined in Section 6218 of the
26 Family Code, or a conviction for any felony offense that involves controlled
27 substances or alcoholic beverages, or any felony offense that involves any activity
28 related to controlled substances or alcoholic beverages, or a conviction for any
29 offense that involves domestic violence, as defined in Section 13700.

30 (2) Local law enforcement agencies shall not release any information concerning
31 any arrest for an offense that did not result in a conviction.

32 (3) Local law enforcement agencies shall not release any information concerning
33 any offense committed by a person who was under 18 years of age at the time he
34 or she committed the offense.

35 (4) Local law enforcement agencies shall release any information concerning
36 any conviction or release from custody that occurred within 10 years of the date on
37 which the request for information is submitted to the Attorney General, unless the
38 conviction was based upon a felony offense that involved controlled substances or
39 alcoholic beverages or a felony offense that involved any activity related to
40 controlled substances or alcoholic beverages. Where a conviction was based on
41 any of these felony offenses, local law enforcement agencies shall release any

1 information concerning this conviction if the conviction occurred within five years
2 of the date on which a request for the information was submitted.

3 (5) Notwithstanding paragraph (4), if information that meets the requirements of
4 paragraphs (2) to (4), inclusive, is located and the information reveals a conviction
5 of an offense specified in paragraph (1), local law enforcement agencies shall
6 release all summary criminal history information concerning the person whether or
7 not the information meets the requirements of paragraph (4), provided, however,
8 that the information meets the requirements of paragraphs (1) to (3), inclusive.

9 (6) Information released to the local public housing authority pursuant to this
10 section shall also be released to parole or probation officers at the same time.

11 (c) State summary criminal history information shall be used by the chief
12 executive officer of the housing authority or a designee only for purposes of
13 identifying prospective participants in subsidized programs and prospective and
14 current staff who have access to residences, whose criminal history is likely to
15 pose a risk to children under the age of 18 years or persons categorized as aged,
16 blind, or disabled living in the housing operated by the authority.

17 (d) If a housing authority obtains summary criminal history information for the
18 purpose of screening a prospective participant pursuant to this section, it shall
19 review and evaluate that information in the context of other available information
20 and shall not evaluate the person's suitability as a prospective participant based
21 solely on his or her past criminal history.

22 (e) If a housing authority determines that a prospective participant is not eligible
23 as a resident, it shall promptly notify him or her of the basis for its determination
24 and, upon request, shall provide him or her within a reasonable time after the
25 determination is made with an opportunity for an informal hearing on the
26 determination in accordance with Section 960.207 of Title 24 of the Code of
27 Federal Regulations.

28 (f) Any information obtained from state summary criminal history information
29 pursuant to this section is confidential and the recipient public housing authority
30 shall not disclose or use the information for any purpose other than that authorized
31 by this section. The state summary criminal history information in the possession
32 of the authority and all copies made from it shall be destroyed not more than 30
33 days after the authority's final decision whether to act on the housing status of the
34 individual to whom the information relates.

35 (g) The local public housing authority receiving state summary criminal history
36 information pursuant to this section shall adopt regulations governing the receipt,
37 maintenance, and use of the information. The regulations shall include provisions
38 that require notice that the authority has access to criminal records of participants
39 and employees who have access to programs.

40 (h) Use of this information is to be consistent with Title 24 of the Code of
41 Federal Regulations and the current regulations adopted by the housing authority
42 using the information.

1 (i) Nothing in this section shall be construed to require a housing authority to
2 request and review an applicant’s criminal history.

3 (j) The California Housing Authorities Association, after compiling data from
4 all public housing authorities that receive summary criminal information pursuant
5 to this chapter, shall report its findings based upon this data to the Legislature
6 prior to January 1, 2000.

7 **Comment.** Paragraph (b)(1) of Section 11105.03 is amended to correct a typographical
8 omission.

9 **Note.** In its recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*,
10 38 Cal. L. Revision Comm’n Reports 217 (2009), the Commission recommended the following
11 amendment of Section 11105.03(b)(1):

12 (1) Local law enforcement agencies shall not release any information unless it relates to a
13 conviction for a serious felony, as defined in subdivision (c) of Section 1192.7, a conviction
14 for any offense punishable under Section 273.5, 422.6, 422.7, 422.75, 422.9, or 1170.75,
15 12020, 12021 or 12021.1 or under Chapter 2 (commencing with Section 29800) or Chapter 3
16 (commencing with Section 29900) of Division 9 of Title 4 of Part 6, or under any provision
17 listed in Section 16590, a conviction under Section 273.6 that involves

18 See *id.* at 1244-47.

19 That amendment was included in the lengthy bill consisting of conforming revisions, but with
20 a technical error. The bill did not insert “or” between “422.9,” and “1170.75,” See SB 1115
21 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 88. To avoid the expense of amending
22 such a lengthy bill, that error was not corrected in the legislative process.

23 To improve the readability of Section 11105.03(b)(1), that problem should now be corrected,
24 as shown above.

25 **Penal Code § 11106, as it reads in 2010 Cal. Stat. ch. 178, § 89 (amended). Retention of**
26 **records**

27 SEC. _____. Section 11106 of the Penal Code, as it reads in Section 89 of
28 Chapter 178 of the Statutes of 2010, is amended to read:

29 11106. (a)(1) In order to assist in the investigation of crime, the prosecution of
30 civil actions by city attorneys pursuant to paragraph (3) of subdivision (c), the
31 arrest and prosecution of criminals, and the recovery of lost, stolen, or found
32 property, the Attorney General shall keep and properly file a complete record of
33 ~~all copies of fingerprints, copies of licenses to carry firearms issued pursuant to~~
34 ~~Section 26150, 26155, 26170, or 26215, information reported to the Department of~~
35 ~~Justice pursuant to Section 26225, dealers’ records of sales of firearms, reports~~
36 ~~provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of~~
37 ~~Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision~~
38 ~~(a) of Section 16585, forms provided pursuant to Section 12084, as that section~~
39 ~~read prior to being repealed by the act that amended this section, reports provided~~
40 ~~pursuant to Sections 26700 to 26915, inclusive, that are not dealers’ records of~~
41 ~~sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in~~
42 ~~any city or county of this state, and all of the following:~~

43 (A) All copies of fingerprints.

1 (B) Copies of licenses to carry firearms issued pursuant to Section 26150,
2 26155, 26170, or 26215.

3 (C) Information reported to the Department of Justice pursuant to Section
4 26225.

5 (D) Dealers' records of sales of firearms.

6 (E) Reports provided pursuant to Article 1 (commencing with Section 27500) of
7 Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in
8 subdivision (a) of Section 16585.

9 (F) Forms provided pursuant to Section 12084, as that section read prior to being
10 repealed by the act that amended this section.

11 (G) Reports provided pursuant to Sections 26700 to 26915, inclusive, that are
12 not dealers' records of sales of firearms.

13 (H) Reports of stolen, lost, found, pledged, or pawned property in any city or
14 county of this state.

15 (2) The Attorney General shall, upon proper application therefor, furnish this the
16 information kept pursuant to subdivision (a) to the officers referred to in Section
17 11105.

18 (b)(1) Except as provided in subdivision (d), the Attorney General shall not
19 retain or compile any information from ~~reports filed pursuant to any provision~~
20 ~~listed in subdivision (c) of Section 16585 for firearms that are not handguns, from~~
21 ~~forms submitted pursuant to Section 12084, as that section read prior to being~~
22 ~~repealed by the act that amended this section, for firearms that are not handguns,~~
23 ~~or from dealers' records of sales for firearms that are not handguns~~ any of the
24 following:

25 (A) Reports filed pursuant to any provision listed in subdivision (c) of Section
26 16585 for firearms that are not handguns.

27 (B) Forms submitted pursuant to Section 12084, as that section read prior to
28 being repealed by the act that amended this section, for firearms that are not
29 handguns.

30 (C) Dealers' records of sales for firearms that are not handguns.

31 (2) All copies of the forms submitted, or any information received in electronic
32 form, pursuant to Section 12084, as that section read prior to being repealed by the
33 act that amended this section, for firearms that are not handguns, or of the dealers'
34 records of sales for firearms that are not handguns shall be destroyed within five
35 days of the clearance by the Attorney General, unless the purchaser or transferor is
36 ineligible to take possession of the firearm.

37 (3) All copies of the reports filed, or any information received in electronic
38 form, pursuant to any provision listed in subdivision (c) of Section 16585 for
39 firearms that are not handguns shall be destroyed within five days of the receipt by
40 the Attorney General, unless retention is necessary for use in a criminal
41 prosecution.

42 ~~(2)~~ (4) A peace officer, the Attorney General, a Department of Justice employee
43 designated by the Attorney General, or any authorized local law enforcement

1 employee shall not retain or compile any information from a firearm transaction
2 record, as defined in Section 16550, for firearms that are not handguns unless
3 retention or compilation is necessary for use in a criminal prosecution or in a
4 proceeding to revoke a license issued pursuant to Sections 26700 to 26915,
5 inclusive.

6 ~~(3)~~ (5) A violation of this subdivision is a misdemeanor.

7 (c)(1) The Attorney General shall permanently keep and properly file and
8 maintain all information reported to the Department of Justice pursuant to the
9 following provisions as to handguns and maintain a registry thereof:

10 (A) Sections 26700 to 26915, inclusive.

11 (B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of
12 Title 4 of Part 6.

13 (C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part
14 6.

15 (D) Any provision listed in subdivision (a) of Section 16585.

16 (E) Former Section 12084.

17 (F) Any other law.

18 (2) The registry shall consist of all of the following:

19 (A) The name, address, identification of, place of birth (state or country),
20 complete telephone number, occupation, sex, description, and all legal names and
21 aliases ever used by the owner or person being loaned the particular handgun as
22 listed on the information provided to the department on the Dealers' Record of
23 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former
24 Section 12084, or reports made to the department pursuant to any provision listed
25 in subdivision (a) of Section 16585 or any other law.

26 (B) The name and address of, and other information about, any person (whether
27 a dealer or a private party) from whom the owner acquired or the person being
28 loaned the particular handgun and when the firearm was acquired or loaned as
29 listed on the information provided to the department on the Dealers' Record of
30 Sale, the LEFT, or reports made to the department pursuant to any provision listed
31 in subdivision (a) of Section 16585 or any other law.

32 (C) Any waiting period exemption applicable to the transaction which resulted
33 in the owner of or the person being loaned the particular handgun acquiring or
34 being loaned that firearm.

35 (D) The manufacturer's name if stamped on the firearm, model name or number
36 if stamped on the firearm, and, if applicable, the serial number, other number (if
37 more than one serial number is stamped on the firearm), caliber, type of firearm, if
38 the firearm is new or used, barrel length, and color of the firearm.

39 (3) Information in the registry referred to in this subdivision shall, upon proper
40 application therefor, be furnished to the officers referred to in Section 11105, to a
41 city attorney prosecuting a civil action, solely for use in prosecuting that civil
42 action and not for any other purpose, or to the person listed in the registry as the
43 owner or person who is listed as being loaned the particular handgun.

1 (4) If any person is listed in the registry as the owner of a firearm through a
2 Dealers' Record of Sale prior to 1979, and the person listed in the registry requests
3 by letter that the Attorney General store and keep the record electronically, as well
4 as in the record's existing photographic, photostatic, or nonerasable optically
5 stored form, the Attorney General shall do so within three working days of receipt
6 of the request. The Attorney General shall, in writing, and as soon as practicable,
7 notify the person requesting electronic storage of the record that the request has
8 been honored as required by this paragraph.

9 ~~(d)(1) Any~~ If the conditions specified in paragraph (2) are met, any officer
10 referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105
11 may disseminate the name of the subject of the record, the number of the firearms
12 listed in the record, and the description of any firearm, including the make, model,
13 and caliber, from the record relating to any firearm's sale, transfer, registration, or
14 license record, or any information reported to the Department of Justice pursuant
15 to Section 26225, Sections 26700 to 26915, inclusive, (A) Article 1 (commencing
16 with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, (B) Chapter 5
17 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, (C) Article 2
18 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6,
19 (D) Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of
20 Title 4 of Part 6, (E) Chapter 2 (commencing with Section 33850) of Division 11
21 of Title 4 of Part 6, or (F) any provision listed in subdivision (a) of Section 16585,
22 if the following conditions are met: any of the following:

23 (A) Section 26225.

24 (B) Sections 26700 to 26915, inclusive.

25 (C) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of
26 Title 4 of Part 6.

27 (D) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part
28 6.

29 (E) Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of
30 Title 4 of Part 6.

31 (F) Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of
32 Title 4 of Part 6.

33 (G) Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of
34 Part 6.

35 (H) Any provision listed in subdivision (a) of Section 16585.

36 (2) Information may be disseminated pursuant to paragraph (1) only if all of the
37 following conditions are satisfied:

38 (A) The subject of the record has been arraigned for a crime in which the victim
39 is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the
40 Family Code and is being prosecuted or is serving a sentence for the crime, or the
41 subject of the record is the subject of an emergency protective order, a temporary
42 restraining order, or an order after hearing, which is in effect and has been issued

1 by a family court under the Domestic Violence Protection Act set forth in Division
2 10 (commencing with Section 6200) of the Family Code.

3 (B) The information is disseminated only to the victim of the crime or to the
4 person who has obtained the emergency protective order, the temporary
5 restraining order, or the order after hearing issued by the family court.

6 (C) Whenever a law enforcement officer disseminates the information
7 authorized by this subdivision, that officer or another officer assigned to the case
8 shall immediately provide the victim of the crime with a “Victims of Domestic
9 Violence” card, as specified in subparagraph (H) of paragraph (9) of subdivision
10 (c) of Section 13701.

11 ~~(2)~~ (3) The victim or person to whom information is disseminated pursuant to
12 this subdivision may disclose it as he or she deems necessary to protect himself or
13 herself or another person from bodily harm by the person who is the subject of the
14 record.

15 **Comment.** Section 11106 is amended to improve clarity and readability. This is not a
16 substantive change.

17 **Note.** An amendment of Section 11106 was recommended by the Commission in
18 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports
19 217, 1247-52 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 89. That amendment included
20 some cumbersome language, because several of the deadly weapons provisions cross-referenced
21 in Section 11106 were reorganized into multiple new sections, making it necessary to replace a
22 single cross-reference with multiple cross-references.

23 For example, the Commission recommended that Section 11106(d)(1) be amended as
24 follows:

25 (d)(1) Any officer referred to in paragraphs (1) to (6), inclusive, of
26 subdivision (b) of Section 11105 may disseminate the name of the subject of the
27 record, the number of the firearms listed in the record, and the description of any
28 firearm, including the make, model, and caliber, from the record relating to any
29 firearm’s sale, transfer, registration, or license record, or any information
30 reported to the Department of Justice pursuant to ~~Section 12021.3, 12053, 12071,~~
31 ~~12072, 12077, 12078, 12082, or 12285~~ (i) Section 26225, (ii) Sections 26700 to
32 26915, inclusive, (iii) Article 1 (commencing with Section 27500) of Chapter 4
33 of Division 6 of Title 4 of Part 6, (iv) Chapter 5 (commencing with Section
34 28050) of Division 6 of Title 4 of Part 6, (v) Article 2 (commencing with Section
35 28150) of Chapter 6 of Division 6 of Title 4 of Part 6, (vi) Article 5
36 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part
37 6, (vii) Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of
38 Part 6, or (viii) any provision listed in subdivision (a) of Section 16585, if the
39 following conditions are met:

- 40 (A) The subject of the record
41 (B) The information is
42 (C) Whenever a law enforcement officer

43 That language was already cumbersome, but the problem was further exacerbated because the
44 Commission’s language was not reproduced verbatim in the bill. Instead, the bill revised Section
45 11106(d)(1) as follows:

46 (d)(1) Any officer referred to in paragraphs (1) to (6), inclusive, of
47 subdivision (b) of Section 11105 may disseminate the name of the subject of the
48 record, the number of the firearms listed in the record, and the description of any

1 firearm, including the make, model, and caliber, from the record relating to any
2 firearm's sale, transfer, registration, or license record, or any information
3 reported to the Department of Justice pursuant to ~~Section 12021.3, 12053, 12071,~~
4 ~~12072, 12077, 12078, 12082, or 12285~~ Section 26225, Sections 26700 to 26915,
5 inclusive. (A) Article 1 (commencing with Section 27500) of Chapter 4 of
6 Division 6 of Title 4 of Part 6, (B) Chapter 5 (commencing with Section 28050)
7 of Division 6 of Title 4 of Part 6, (C) Article 2 (commencing with Section 28150)
8 of Chapter 6 of Division 6 of Title 4 of Part 6, (D) Article 5 (commencing with
9 Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6, (E) Chapter 2
10 (commencing with Section 33850) of Division 11 of Title 4 of Part 6, or (F) any
11 provision listed in subdivision (a) of Section 16585, if the following conditions
12 are met:

- 13 (A) The subject of the record
- 14 (B) The information is
- 15 (C) Whenever a law enforcement officer

16 See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, § 89. To avoid the expense
17 of amending such a lengthy bill, this deviation from the Commission's language was not
18 addressed in the legislative process.

19 The enacted version of subdivision (d)(1), using (A)-(F) lettering instead of (i)-(viii)
20 numbering, is potentially confusing for two reasons. First, paragraph (d)(1) already contained
21 subparagraphs (A)-(C), so there is now duplication in labeling. Second, the new (A)-(F) lettering
22 starts in the middle of the list of cross-references, not at the beginning.

23 Those problems should be corrected. However, there is also other cumbersome and
24 potentially confusing language in Section 11106. The amendment of Section 11106 shown above
25 is intended to make the provision more clear and readable, without changing its substance.

26 **☞ Staff Note.** Some clean-up of Section 11106 is clearly in order, to improve clarity and
27 readability. The question is how much clean-up to do. The Commission was cautious about
28 revising the language earlier, because it did not want to do anything that might jeopardize
29 enactment of the proposed reorganization of the deadly weapon statutes. Now, however, may be
30 an opportune time to revise the statute to improve its clarity and readability, without changing its
31 substance. The staff encourages comments on whether to proceed with the amendment shown
32 above, or modify it in some manner.

33 **Penal Code § 12003, as it reads in 2010 Cal. Stat. ch. 711, § 5 (amended). Severability of**
34 **provisions**

35 SEC. _____. Section 12003 of the Penal Code, as it reads in Section 5 of Chapter
36 711 of the Statutes of 2010, is amended to read:

37 12003. If any section, ~~subsection~~ subdivision, paragraph, subparagraph,
38 sentence, clause, or phrase of this title or any other provision listed in Section
39 16580 is for any reason held to be unconstitutional, that decision shall not affect
40 the validity of the remaining portions of this title or any other provision listed in
41 Section 16580. The Legislature hereby declares that it would have passed this title
42 and any other provision listed in Section 16580, and each section, ~~subsections~~
43 subdivision, paragraph, subparagraph, sentence, clause, and phrase thereof,
44 irrespective of the fact that any one or more other sections, ~~subsections~~
45 subdivisions, paragraphs, subparagraphs, sentences, clauses, or phrases be
46 declared unconstitutional.

1 **Comment.** Section 12003 is amended to make terminological corrections. This is not a
2 substantive change.

3 **Note.** New Sections 12003 and 23505, operative January 1, 2012, are almost identical
4 provisions that will continue an earlier version of Penal Code Section 12003, which contains
5 terminological errors and will be repealed on January 1, 2012. In perhaps an excess of caution,
6 the Commission did not correct those terminological errors in drafting new Sections 12003 and
7 23505. It did not want to create any risk of a substantive change, because that could have
8 jeopardized enactment of its recommendation on *Nonsubstantive Reorganization of Deadly*
9 *Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009).

10 While the bills to implement that recommendation were pending, the Office of Legislative
11 Counsel requested permission to correct the terminological errors. Such permission was withheld
12 on the ground that it would be better to deal with the matter in a clean-up bill in 2011.

13 Now that the bills implementing the Commission's recommendation have been enacted, it
14 appears appropriate to correct the terminological errors, as shown in the above amendment.

15 **Penal Code § 23505 (amended). Severability of provisions**

16 SEC. _____. Section 23505 of the Penal Code is amended to read:

17 23505. If any section, ~~subsection~~ subdivision, paragraph, subparagraph,
18 sentence, clause, or phrase of any provision listed in Section 16580 is for any
19 reason held unconstitutional, that decision does not affect the validity of any other
20 provision listed in Section 16580. The Legislature hereby declares that it would
21 have passed the provisions listed in Section 16580 and each section, ~~subsection~~
22 subdivision, paragraph, subparagraph, sentence, clause, and phrase of ~~it~~ those
23 provisions, irrespective of the fact that any one or more other sections, ~~subsections~~
24 subdivisions, paragraphs, subparagraphs, sentences, clauses, or phrases be
25 declared unconstitutional.

26 **Comment.** Section 23505 is amended to make terminological corrections and a grammatical
27 correction. This is not a substantive change.

28 **Note.** New Sections 12003 and 23505, operative January 1, 2012, are almost identical
29 provisions that will continue an earlier version of Penal Code Section 12003, which contains
30 terminological errors and will be repealed on January 1, 2012. In perhaps an excess of caution,
31 the Commission did not correct those terminological errors in drafting new Sections 12003 and
32 23505. It did not want to create any risk of a substantive change, because that could have
33 jeopardized enactment of its recommendation on *Nonsubstantive Reorganization of Deadly*
34 *Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009).

35 While the bills to implement that recommendation were pending, the Office of Legislative
36 Counsel requested permission to correct the terminological errors. Such permission was withheld
37 on the ground that it would be better to deal with the matter in a clean-up bill in 2011.

38 Now that the bills implementing the Commission's recommendation have been enacted, it
39 appears appropriate to correct the terminological errors, as shown in the above amendment. In
40 addition, the above amendment would make a grammatical correction, replacing "it" with "those
41 provisions" to clarify the intended meaning.

42 **Penal Code § 25105 (amended). Exceptions**

43 SEC. _____. Section 25105 of the Penal Code is amended to read:

44 25105. Section 25100 does not apply whenever any of the following occurs:

45 (a) The child obtains the firearm as a result of an illegal entry to any premises by
46 any person.

1 (b) The firearm is kept in a locked container or in a location that a reasonable
2 person would believe to be secure.

3 (c) The firearm is carried on the person or within close enough proximity thereto
4 that the individual can readily retrieve and use the firearm as if carried on the
5 person.

6 (d) The firearm is locked with a locking device, as defined in Section 16860,
7 which has rendered the firearm inoperable.

8 (e) The person is a peace officer or a member of the Armed Forces or the
9 National Guard and the child obtains the firearm during, or incidental to, the
10 performance of the person's duties.

11 (f) The child obtains, or obtains and discharges, the firearm in a lawful act of
12 self-defense or defense of another person.

13 (g) The person who keeps a loaded firearm on ~~any premise that is~~ premises that
14 are under the person's custody or control has no reasonable expectation, based on
15 objective facts and circumstances, that a child is likely to be present on the
16 premises.

17 **Comment.** Section 25105 is amended to make a grammatical correction. This is not a
18 substantive change.

19 **Note.** Section 25105, operative January 1, 2012, will continue Penal Code Section
20 12035(c)(7), which contains a grammatical error. In perhaps an excess of caution, the
21 Commission did not correct this grammatical error in drafting Section 25105. It did not want to
22 create any risk of a substantive change, because that could have jeopardized enactment of its
23 recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L.
24 Revision Comm'n Reports 217 (2009).

25 While the bills to implement that recommendation were pending, the Office of Legislative
26 Counsel requested permission to correct the grammatical error. Such permission was withheld on
27 the ground that it would be better to deal with the matter in a clean-up bill in 2011.

28 Now that the bills implementing the Commission's recommendation have been enacted, it
29 appears appropriate to correct the grammatical error, as shown in the above amendment.

30 **Penal Code § 29510 (amended). Application fee**

31 SEC. _____. Section 29510 of the Penal Code is amended to read:

32 29510. (a) The Department of Justice shall recover the full costs of
33 administering the entertainment firearms permit program by assessing the
34 following application fees:

35 (1) For the initial application: one hundred four dollars (\$104). Of this sum,
36 fifty-six dollars (\$56) shall be deposited into the Fingerprint Fee Account, and
37 forty-eight dollars (\$48) shall be deposited into the ~~Dealer~~ Dealers' Record of Sale
38 Special Account.

39 (2) For each annual renewal application: twenty-nine dollars (\$29), which shall
40 be deposited into the ~~Dealer~~ Dealers' Record of Sale Special Account.

41 (b) The department shall annually review and shall adjust the fees specified in
42 subdivision (a), if necessary, to fully fund, but not to exceed the actual costs of,
43 the permit program provided for by this chapter, including enforcement of the
44 program.

1 **Comment.** Section 29510 is amended to replace “Dealer Record of Sale Account” with
2 “Dealers’ Record of Sale Special Account.” This conforms to the terminology used in other
3 provisions that refer to the same account. See Sections 27560(f), 28235, 28460, 30900, 30905,
4 31115, 33860.

5 **Note.** Section 29510(a), operative January 1, 2012, will continue Penal Code Section
6 12081(c), which twice refers to the “Dealer Record of Sale Account.” Other deadly weapon
7 provisions refer instead to the “Dealers’ Record of Sale Special Account.” See Sections 27560(f)
8 (continuing Section 12072(f)(2)(D)(iii)), 28235 (continuing Section 12076(g)), 28460 (continuing
9 Section 12083(b)), 30900 (continuing Section 12285(a)(1)), 30905 (continuing Section
10 12285(a)(2)), 31115 (continuing Section 12289(b)), 33860 (continuing Section 12021.3(c)).

11 In perhaps an excess of caution, the Commission did not replace the references to “Dealer
12 Record of Sale Account” with “Dealers’ Record of Sale Special Account” in drafting Section
13 29510. The Commission did not want to create any risk of a substantive change, because that
14 could have jeopardized enactment of its recommendation on *Nonsubstantive Reorganization of*
15 *Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009). Thus, the
16 Commission left the references intact, but included the matter in its list of “Minor Clean-Up
17 Issues for Possible Future Legislative Attention.” See *id.* at 271 (Item #34).

18 While the bills to implement that recommendation were pending, the Office of Legislative
19 Counsel requested permission to conform the terminology. Such permission was withheld on the
20 ground that it would be better to deal with the matter in a clean-up bill in 2011.

21 Now that the bills implementing the Commission’s recommendation have been enacted, it
22 appears appropriate to conform the terminology, as shown in the above amendment.

23 **Welf. & Inst. Code § 8103 (amended). Weapon restrictions on patients and other persons**

24 SEC. _____. Section 8103 of the Welfare and Institutions Code is amended to
25 read:

26 8103. (a)(1) No person who after October 1, 1955, has been adjudicated by a
27 court of any state to be a danger to others as a result of a mental disorder or mental
28 illness, or who has been adjudicated to be a mentally disordered sex offender, shall
29 purchase or receive, or attempt to purchase or receive, or have in his or her
30 possession, custody, or control any firearm or any other deadly weapon unless
31 there has been issued to the person a certificate by the court of adjudication upon
32 release from treatment or at a later date stating that the person may possess a
33 firearm or any other deadly weapon without endangering others, and the person
34 has not, subsequent to the issuance of the certificate, again been adjudicated by a
35 court to be a danger to others as a result of a mental disorder or mental illness.

36 (2) The court shall immediately notify the Department of Justice of the court
37 order finding the individual to be a person described in paragraph (1). The court
38 shall also notify the Department of Justice of any certificate issued as described in
39 paragraph (1).

40 (b)(1) No person who has been found, pursuant to Section 1026 of the Penal
41 Code or the law of any other state or the United States, not guilty by reason of
42 insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal
43 Code in which the victim suffers intentionally inflicted great bodily injury,
44 carjacking or robbery in which the victim suffers great bodily injury, a violation of
45 Section 451 or 452 of the Penal Code involving a trailer coach, as defined in
46 Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph

1 (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision
2 (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code
3 in the first degree, assault with intent to commit murder, a violation of Section 220
4 of the Penal Code in which the victim suffers great bodily injury, a violation of
5 Section ~~12303.1, 12303.2, 12303.3, 12308, 12309, or 12310~~ 18715, 18725, 18740,
6 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great
7 bodily injury, or an act which poses a serious threat of bodily harm to another
8 person, or a violation of the law of any other state or the United States that
9 includes all the elements of any of the above felonies as defined under California
10 law, shall purchase or receive, or attempt to purchase or receive, or have in his or
11 her possession or under his or her custody or control any firearm or any other
12 deadly weapon.

13 (2) The court shall immediately notify the Department of Justice of the court
14 order finding the person to be a person described in paragraph (1).

15 (c)(1) No person who has been found, pursuant to Section 1026 of the Penal
16 Code or the law of any other state or the United States, not guilty by reason of
17 insanity of any crime other than those described in subdivision (b) shall purchase
18 or receive, or attempt to purchase or receive, or shall have in his or her possession,
19 custody, or control any firearm or any other deadly weapon unless the court of
20 commitment has found the person to have recovered sanity, pursuant to Section
21 1026.2 of the Penal Code or the law of any other state or the United States.

22 (2) The court shall immediately notify the Department of Justice of the court
23 order finding the person to be a person described in paragraph (1). The court shall
24 also notify the Department of Justice when it finds that the person has recovered
25 his or her sanity.

26 (d)(1) No person found by a court to be mentally incompetent to stand trial,
27 pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state
28 or the United States, shall purchase or receive, or attempt to purchase or receive,
29 or shall have in his or her possession, custody, or control any firearm or any other
30 deadly weapon, unless there has been a finding with respect to the person of
31 restoration to competence to stand trial by the committing court, pursuant to
32 Section 1372 of the Penal Code or the law of any other state or the United States.

33 (2) The court shall immediately notify the Department of Justice of the court
34 order finding the person to be mentally incompetent as described in paragraph (1).
35 The court shall also notify the Department of Justice when it finds that the person
36 has recovered his or her competence.

37 (e)(1) No person who has been placed under conservatorship by a court,
38 pursuant to Section 5350 or the law of any other state or the United States, because
39 the person is gravely disabled as a result of a mental disorder or impairment by
40 chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or
41 shall have in his or her possession, custody, or control any firearm or any other
42 deadly weapon while under the conservatorship if, at the time the conservatorship
43 was ordered or thereafter, the court which imposed the conservatorship found that

1 possession of a firearm or any other deadly weapon by the person would present a
2 danger to the safety of the person or to others. Upon placing any person under
3 conservatorship, and prohibiting firearm or any other deadly weapon possession
4 by the person, the court shall notify the person of this prohibition.

5 (2) The court shall immediately notify the Department of Justice of the court
6 order placing the person under conservatorship and prohibiting firearm or any
7 other deadly weapon possession by the person as described in paragraph (1). The
8 notice shall include the date the conservatorship was imposed and the date the
9 conservatorship is to be terminated. If the conservatorship is subsequently
10 terminated before the date listed in the notice to the Department of Justice or the
11 court subsequently finds that possession of a firearm or any other deadly weapon
12 by the person would no longer present a danger to the safety of the person or
13 others, the court shall immediately notify the Department of Justice.

14 (3) All information provided to the Department of Justice pursuant to paragraph
15 (2) shall be kept confidential, separate, and apart from all other records maintained
16 by the Department of Justice, and shall be used only to determine eligibility to
17 purchase or possess firearms or other deadly weapons. Any person who knowingly
18 furnishes that information for any other purpose is guilty of a misdemeanor. All
19 the information concerning any person shall be destroyed upon receipt by the
20 Department of Justice of notice of the termination of conservatorship as to that
21 person pursuant to paragraph (2).

22 (f)(1) No person who has been (A) taken into custody as provided in Section
23 5150 because that person is a danger to himself, herself, or to others, (B) assessed
24 within the meaning of Section 5151, and (C) admitted to a designated facility
25 within the meaning of Sections 5151 and 5152 because that person is a danger to
26 himself, herself, or others, shall own, possess, control, receive, or purchase, or
27 attempt to own, possess, control, receive, or purchase any firearm for a period of
28 five years after the person is released from the facility. A person described in the
29 preceding sentence, however, may own, possess, control, receive, or purchase, or
30 attempt to own, possess, control, receive, or purchase any firearm if the superior
31 court has, pursuant to paragraph (5), found that the People of the State of
32 California have not met their burden pursuant to paragraph (6).

33 (2)(A) For each person subject to this subdivision, the facility shall immediately,
34 on the date of admission, submit a report to the Department of Justice, on a form
35 prescribed by the Department of Justice, containing information that includes, but
36 is not limited to, the identity of the person and the legal grounds upon which the
37 person was admitted to the facility.

38 Any report submitted pursuant to this paragraph shall be confidential, except for
39 purposes of the court proceedings described in this subdivision and for
40 determining the eligibility of the person to own, possess, control, receive, or
41 purchase a firearm.

1 (B) Commencing July 1, 2012, facilities shall submit reports pursuant to this
2 paragraph exclusively by electronic means, in a manner prescribed by the
3 Department of Justice.

4 (3) Prior to, or concurrent with, the discharge, the facility shall inform a person
5 subject to this subdivision that he or she is prohibited from owning, possessing,
6 controlling, receiving, or purchasing any firearm for a period of five years.
7 Simultaneously, the facility shall inform the person that he or she may request a
8 hearing from a court, as provided in this subdivision, for an order permitting the
9 person to own, possess, control, receive, or purchase a firearm. The facility shall
10 provide the person with a form for a request for a hearing. The Department of
11 Justice shall prescribe the form. Where the person requests a hearing at the time of
12 discharge, the facility shall forward the form to the superior court unless the
13 person states that he or she will submit the form to the superior court.

14 (4) The Department of Justice shall provide the form upon request to any person
15 described in paragraph (1). The Department of Justice shall also provide the form
16 to the superior court in each county. A person described in paragraph (1) may
17 make a single request for a hearing at any time during the five-year period. The
18 request for hearing shall be made on the form prescribed by the department or in a
19 document that includes equivalent language.

20 (5) Any person who is subject to paragraph (1) who has requested a hearing
21 from the superior court of his or her county of residence for an order that he or she
22 may own, possess, control, receive, or purchase firearms shall be given a hearing.
23 The clerk of the court shall set a hearing date and notify the person, the
24 Department of Justice, and the district attorney. The People of the State of
25 California shall be the plaintiff in the proceeding and shall be represented by the
26 district attorney. Upon motion of the district attorney, or on its own motion, the
27 superior court may transfer the hearing to the county in which the person resided
28 at the time of his or her detention, the county in which the person was detained, or
29 the county in which the person was evaluated or treated. Within seven days after
30 the request for a hearing, the Department of Justice shall file copies of the reports
31 described in this section with the superior court. The reports shall be disclosed
32 upon request to the person and to the district attorney. The court shall set the
33 hearing within 30 days of receipt of the request for a hearing. Upon showing good
34 cause, the district attorney shall be entitled to a continuance not to exceed 14 days
35 after the district attorney was notified of the hearing date by the clerk of the court.
36 If additional continuances are granted, the total length of time for continuances
37 shall not exceed 60 days. The district attorney may notify the county mental health
38 director of the hearing who shall provide information about the detention of the
39 person that may be relevant to the court and shall file that information with the
40 superior court. That information shall be disclosed to the person and to the district
41 attorney. The court, upon motion of the person subject to paragraph (1)
42 establishing that confidential information is likely to be discussed during the
43 hearing that would cause harm to the person, shall conduct the hearing in camera

1 with only the relevant parties present, unless the court finds that the public interest
2 would be better served by conducting the hearing in public. Notwithstanding any
3 other law, declarations, police reports, including criminal history information, and
4 any other material and relevant evidence that is not excluded under Section 352 of
5 the Evidence Code shall be admissible at the hearing under this section.

6 (6) The people shall bear the burden of showing by a preponderance of the
7 evidence that the person would not be likely to use firearms in a safe and lawful
8 manner.

9 (7) If the court finds at the hearing set forth in paragraph (5) that the people have
10 not met their burden as set forth in paragraph (6), the court shall order that the
11 person shall not be subject to the five-year prohibition in this section on the
12 ownership, control, receipt, possession or purchase of firearms. A copy of the
13 order shall be submitted to the Department of Justice. Upon receipt of the order,
14 the Department of Justice shall delete any reference to the prohibition against
15 firearms from the person's state mental health firearms prohibition system
16 information.

17 (8) Where the district attorney declines or fails to go forward in the hearing, the
18 court shall order that the person shall not be subject to the five-year prohibition
19 required by this subdivision on the ownership, control, receipt, possession, or
20 purchase of firearms. A copy of the order shall be submitted to the Department of
21 Justice. Upon receipt of the order, the Department of Justice shall, within 15 days,
22 delete any reference to the prohibition against firearms from the person's state
23 mental health firearms prohibition system information.

24 (9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to
25 this section to determine the eligibility of persons to own, possess, control,
26 receive, or purchase a firearm if the person is the subject of a criminal
27 investigation, a part of which involves the ownership, possession, control, receipt,
28 or purchase of a firearm.

29 (g)(1) No person who has been certified for intensive treatment under Section
30 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or
31 attempt to own, possess, control, receive, or purchase any firearm for a period of
32 five years.

33 Any person who meets the criteria contained in subdivision (e) or (f) who is
34 released from intensive treatment shall nevertheless, if applicable, remain subject
35 to the prohibition contained in subdivision (e) or (f).

36 (2)(A) For each person certified for intensive treatment under paragraph (1), the
37 facility shall immediately submit a report to the Department of Justice, on a form
38 prescribed by the department, containing information regarding the person,
39 including, but not limited to, the legal identity of the person and the legal grounds
40 upon which the person was certified. Any report submitted pursuant to this
41 paragraph shall only be used for the purposes specified in paragraph (2) of
42 subdivision (f).

1 (B) Commencing July 1, 2012, facilities shall submit reports pursuant to this
2 paragraph exclusively by electronic means, in a manner prescribed by the
3 Department of Justice.

4 (3) Prior to, or concurrent with, the discharge of each person certified for
5 intensive treatment under paragraph (1), the facility shall inform the person of that
6 information specified in paragraph (3) of subdivision (f).

7 (4) Any person who is subject to paragraph (1) may petition the superior court of
8 his or her county of residence for an order that he or she may own, possess,
9 control, receive, or purchase firearms. At the time the petition is filed, the clerk of
10 the court shall set a hearing date and notify the person, the Department of Justice,
11 and the district attorney. The People of the State of California shall be the
12 respondent in the proceeding and shall be represented by the district attorney.
13 Upon motion of the district attorney, or on its own motion, the superior court may
14 transfer the petition to the county in which the person resided at the time of his or
15 her detention, the county in which the person was detained, or the county in which
16 the person was evaluated or treated. Within seven days after receiving notice of
17 the petition, the Department of Justice shall file copies of the reports described in
18 this section with the superior court. The reports shall be disclosed upon request to
19 the person and to the district attorney. The district attorney shall be entitled to a
20 continuance of the hearing to a date of not less than 14 days after the district
21 attorney was notified of the hearing date by the clerk of the court. The district
22 attorney may notify the county mental health director of the petition, and the
23 county mental health director shall provide information about the detention of the
24 person that may be relevant to the court and shall file that information with the
25 superior court. That information shall be disclosed to the person and to the district
26 attorney. The court, upon motion of the person subject to paragraph (1)
27 establishing that confidential information is likely to be discussed during the
28 hearing that would cause harm to the person, shall conduct the hearing in camera
29 with only the relevant parties present, unless the court finds that the public interest
30 would be better served by conducting the hearing in public. Notwithstanding any
31 other provision of law, any declaration, police reports, including criminal history
32 information, and any other material and relevant evidence that is not excluded
33 under Section 352 of the Evidence Code, shall be admissible at the hearing under
34 this section. If the court finds by a preponderance of the evidence that the person
35 would be likely to use firearms in a safe and lawful manner, the court may order
36 that the person may own, control, receive, possess, or purchase firearms. A copy
37 of the order shall be submitted to the Department of Justice. Upon receipt of the
38 order, the Department of Justice shall delete any reference to the prohibition
39 against firearms from the person's state mental health firearms prohibition system
40 information.

41 (h) For all persons identified in subdivisions (f) and (g), facilities shall report to
42 the Department of Justice as specified in those subdivisions, except facilities shall

1 not report persons under subdivision (g) if the same persons previously have been
2 reported under subdivision (f).

3 Additionally, all facilities shall report to the Department of Justice upon the
4 discharge of persons from whom reports have been submitted pursuant to
5 subdivision (f) or (g). However, a report shall not be filed for persons who are
6 discharged within 31 days after the date of admission.

7 (i) Every person who owns or possesses or has under his or her custody or
8 control, or purchases or receives, or attempts to purchase or receive, any firearm or
9 any other deadly weapon in violation of this section shall be punished by
10 imprisonment in the state prison or in a county jail for not more than one year.

11 (j) “Deadly weapon,” as used in this section, has the meaning prescribed by
12 Section 8100.

13 **Comment.** Subdivision (b) of Section 8103 is amended to reflect nonsubstantive
14 reorganization of the statutes governing control of deadly weapons.

15 For guidance in applying this section, see Section 16015 (determining existence of prior
16 conviction).

17 **Note.** A similar amendment of Section 8103 was recommended by the Commission in
18 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports
19 217, 1298-1307 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 104. That amendment did
20 not become law, because it was chaptered out by another amendment of the same section. See AB
21 302 (Beall), 2010 Cal. Stat. ch. 344, § 1; see also Gov’t Code § 9605 (specifying how to resolve
22 conflict between two bills that amend same section).

23 **Welf. & Inst. Code § 15657.03 (amended). Protective orders for elder or dependent adult**
24 **and other specified persons**

25 SEC. _____. Section 15657.03 of the Welfare and Institutions Code is amended
26 to read:

27 15657.03. (a)(1) An elder or dependent adult who has suffered abuse as defined
28 in Section 15610.07 may seek protective orders as provided in this section.

29 (2) A petition may be brought on behalf of an abused elder or dependent adult
30 by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of
31 an elder or dependent adult who acts within the authority of the power of attorney,
32 a person appointed as a guardian ad litem for the elder or dependent adult, or other
33 person legally authorized to seek such relief.

34 (b) For the purposes of this section:

35 (1) “Conservator” means the legally appointed conservator of the person or
36 estate of the petitioner, or both.

37 (2) “Petitioner” means the elder or dependent adult to be protected by the
38 protective orders and, if the court grants the petition, the protected person.

39 (3) “Protective order” means an order that includes any of the following
40 restraining orders, whether issued ex parte, after notice and hearing, or in a
41 judgment:

42 (A) An order enjoining a party from abusing, intimidating, molesting, attacking,
43 striking, stalking, threatening, sexually assaulting, battering, harassing,

1 telephoning, including, but not limited to, making annoying telephone calls as
2 described in Section 653m of the Penal Code, destroying personal property,
3 contacting, either directly or indirectly, by mail or otherwise, or coming within a
4 specified distance of, or disturbing the peace of the petitioner, and, in the
5 discretion of the court, on a showing of good cause, of other named family or
6 household members or a conservator, if any, of the petitioner.

7 (B) An order excluding a party from the petitioner’s residence or dwelling,
8 except that this order shall not be issued if legal or equitable title to, or lease of,
9 the residence or dwelling is in the sole name of the party to be excluded, or is in
10 the name of the party to be excluded and any other party besides the petitioner.

11 (C) An order enjoining a party from specified behavior that the court determines
12 is necessary to effectuate orders described in subparagraph (A) or (B).

13 (4) “Respondent” means the person against whom the protective orders are
14 sought and, if the petition is granted, the restrained person.

15 (c) An order may be issued under this section, with or without notice, to restrain
16 any person for the purpose of preventing a recurrence of abuse, if a declaration
17 shows, to the satisfaction of the court, reasonable proof of a past act or acts of
18 abuse of the petitioning elder or dependent adult.

19 (d) Upon filing a petition for protective orders under this section, the petitioner
20 may obtain a temporary restraining order in accordance with Section 527 of the
21 Code of Civil Procedure, except to the extent this section provides a rule that is
22 inconsistent. The temporary restraining order may include any of the protective
23 orders described in paragraph (3) of subdivision (b). However, the court may issue
24 an ex parte order excluding a party from the petitioner’s residence or dwelling
25 only on a showing of all of the following:

26 (1) Facts sufficient for the court to ascertain that the party who will stay in the
27 dwelling has a right under color of law to possession of the premises.

28 (2) That the party to be excluded has assaulted or threatens to assault the
29 petitioner, other named family or household member of the petitioner, or a
30 conservator of the petitioner.

31 (3) That physical or emotional harm would otherwise result to the petitioner,
32 other named family or household member of the petitioner, or a conservator of the
33 petitioner.

34 (e) A request for the issuance of a temporary restraining order without notice
35 under this section shall be granted or denied on the same day that the petition is
36 submitted to the court, unless the petition is filed too late in the day to permit
37 effective review, in which case the order shall be granted or denied on the next day
38 of judicial business in sufficient time for the order to be filed that day with the
39 clerk of the court.

40 (f) Within 21 days, or, if good cause appears to the court, 25 days, from the date
41 that a request for a temporary restraining order is granted or denied, a hearing shall
42 be held on the petition. If no request for temporary orders is made, the hearing

1 shall be held within 21 days, or, if good cause appears to the court, 25 days, from
2 the date that the petition is filed.

3 (g) The respondent may file a response that explains or denies the alleged abuse.

4 (h) The court may issue, upon notice and a hearing, any of the orders set forth in
5 paragraph (3) of subdivision (b). The court may issue, after notice and hearing, an
6 order excluding a person from a residence or dwelling if the court finds that
7 physical or emotional harm would otherwise result to the petitioner, other named
8 family or household member of the petitioner, or conservator of the petitioner.

9 (i)(1) In the discretion of the court, an order issued after notice and a hearing
10 under this section may have a duration of not more than five years, subject to
11 termination or modification by further order of the court either on written
12 stipulation filed with the court or on the motion of a party. These orders may be
13 renewed upon the request of a party, either for five years or permanently, without
14 a showing of any further abuse since the issuance of the original order, subject to
15 termination or modification by further order of the court either on written
16 stipulation filed with the court or on the motion of a party. The request for renewal
17 may be brought at any time within the three months before the expiration of the
18 order.

19 (2) The failure to state the expiration date on the face of the form creates an
20 order with a duration of three years from the date of issuance.

21 (j) In a proceeding under this section, a support person may accompany a party
22 in court and, if the party is not represented by an attorney, may sit with the party at
23 the table that is generally reserved for the party and the party's attorney. The
24 support person is present to provide moral and emotional support for a person who
25 alleges he or she is a victim of abuse. The support person is not present as a legal
26 adviser and may not provide legal advice. The support person may assist the
27 person who alleges he or she is a victim of abuse in feeling more confident that he
28 or she will not be injured or threatened by the other party during the proceedings if
29 the person who alleges he or she is a victim of abuse and the other party are
30 required to be present in close proximity. This subdivision does not preclude the
31 court from exercising its discretion to remove the support person from the
32 courtroom if the court believes the support person is prompting, swaying, or
33 influencing the party assisted by the support person.

34 (k) Upon the filing of a petition for protective orders under this section, the
35 respondent shall be personally served with a copy of the petition, notice of the
36 hearing or order to show cause, temporary restraining order, if any, and any
37 declarations in support of the petition. Service shall be made at least five days
38 before the hearing. The court may, on motion of the petitioner or on its own
39 motion, shorten the time for service on the respondent.

40 (l) A notice of hearing under this section shall notify the respondent that if he or
41 she does not attend the hearing, the court may make orders against him or her that
42 could last up to five years.

1 (m)(1) The court may, upon the filing of a declaration by the petitioner that the
2 respondent could not be served within the time required by statute, reissue an
3 order previously issued and dissolved by the court for failure to serve the
4 respondent. The reissued order shall remain in effect until the date set for the
5 hearing.

6 (2) The reissued order shall state on its face the date of expiration of the order.

7 (n)(1) If a respondent, named in an order issued under this section after a
8 hearing, has not been served personally with the order but has received actual
9 notice of the existence and substance of the order through personal appearance in
10 court to hear the terms of the order from the court, no additional proof of service is
11 required for enforcement of the order.

12 (2) If the respondent named in a temporary restraining order is personally served
13 with the order and notice of hearing with respect to a restraining order or
14 protective order based on the temporary restraining order, but the respondent does
15 not appear at the hearing, either personally or by an attorney, and the terms and
16 conditions of the restraining order or protective order issued at the hearing are
17 identical to the temporary restraining order, except for the duration of the order,
18 then the restraining order or protective order issued at the hearing may be served
19 on the respondent by first-class mail sent to the respondent at the most current
20 address for the respondent that is available to the court.

21 (3) The Judicial Council form for temporary orders issued pursuant to this
22 subdivision shall contain a statement in substantially the following form:

23 “If you have been personally served with a temporary restraining order and
24 notice of hearing, but you do not appear at the hearing either in person or by a
25 lawyer, and a restraining order that is the same as this temporary restraining order
26 except for the expiration date is issued at the hearing, a copy of the order will be
27 served on you by mail at the following address: _____.

28 If that address is not correct or you wish to verify that the temporary restraining
29 order was converted to a restraining order at the hearing without substantive
30 change and to find out the duration of that order, contact the clerk of the court.”

31 (o)(1) Information on any protective order relating to elder or dependent adult
32 abuse issued by a court pursuant to this section shall be transmitted to the
33 Department of Justice in accordance with either paragraph (2) or (3).

34 (2) The court shall order the petitioner or the attorney for the petitioner to
35 deliver a copy of an order issued under this section, or a reissuance, extension,
36 modification, or termination of the order, and any subsequent proof of service, by
37 the close of the business day on which the order, reissuance, extension,
38 modification, or termination was made, to each law enforcement agency having
39 jurisdiction over the residence of the petitioner, and to any additional law
40 enforcement agencies within the court’s discretion as are requested by the
41 petitioner.

1 (3) Alternatively, the court or its designee shall transmit, within one business
2 day, to law enforcement personnel all information required under subdivision (b)
3 of Section 6380 of the Family Code regarding any order issued under this section,
4 or a reissuance, extension, modification, or termination of the order, and any
5 subsequent proof of service, by either one of the following methods:

6 (A) Transmitting a physical copy of the order or proof of service to a local law
7 enforcement agency authorized by the Department of Justice to enter orders into
8 the California Law Enforcement Telecommunications System (CLETS).

9 (B) With the approval of the Department of Justice, entering the order or proof
10 of service into CLETS directly.

11 (4) Each appropriate law enforcement agency shall make available information
12 as to the existence and current status of these orders to law enforcement officers
13 responding to the scene of reported abuse.

14 (5) An order issued under this section shall, on request of the petitioner, be
15 served on the respondent, whether or not the respondent has been taken into
16 custody, by any law enforcement officer who is present at the scene of reported
17 abuse involving the parties to the proceeding. The petitioner shall provide the
18 officer with an endorsed copy of the order and a proof of service, which the officer
19 shall complete and send to the issuing court.

20 (6) Upon receiving information at the scene of an incident of abuse that a
21 protective order has been issued under this section, or that a person who has been
22 taken into custody is the respondent to that order, if the protected person cannot
23 produce an endorsed copy of the order, a law enforcement officer shall
24 immediately attempt to verify the existence of the order.

25 (7) If the law enforcement officer determines that a protective order has been
26 issued, but not served, the officer shall immediately notify the respondent of the
27 terms of the order and where a written copy of the order can be obtained, and the
28 officer shall at that time also enforce the order. The law enforcement officer's
29 verbal notice of the terms of the order shall constitute service of the order and is
30 sufficient notice for the purposes of this section and for the purposes of Section
31 273.6 of the Penal Code.

32 (p) Nothing in this section shall preclude either party from representation by
33 private counsel or from appearing on the party's own behalf.

34 (q) There is no filing fee for a petition, response, or paper seeking the
35 reissuance, modification, or enforcement of a protective order filed in a
36 proceeding brought pursuant to this section.

37 (r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the
38 Government Code, a petitioner shall not be required to pay a fee for law
39 enforcement to serve an order issued under this section.

40 (s) The prevailing party in any action brought under this section may be awarded
41 court costs and attorney's fees, if any.

1 (t)(1) A person subject to a protective order under this section shall not own,
2 possess, purchase, receive, or attempt to receive a firearm or ammunition while the
3 protective order is in effect.

4 (2) The court shall order a person subject to a protective order issued under this
5 section to relinquish any firearms he or she owns or possesses pursuant to Section
6 527.9 of the Code of Civil Procedure.

7 (3) Every person who owns, possesses, purchases, or receives, or attempts to
8 purchase or receive a firearm or ammunition while subject to a protective order
9 issued under this section is punishable pursuant to ~~subdivision (g) of Section~~
10 ~~12021~~ Section 29825 of the Penal Code.

11 (4) This subdivision shall not apply in a case in which the protective order
12 issued under this section was made solely on the basis of financial abuse
13 unaccompanied by force, threat, harassment, intimidation, or any other form of
14 abuse.

15 (u) Any willful disobedience of any temporary restraining order or restraining
16 order after hearing granted under this section is punishable pursuant to Section
17 273.6 of the Penal Code.

18 (v) This section does not apply to any action or proceeding governed by Title
19 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code,
20 by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of
21 Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family
22 Code. Nothing in this section shall preclude a petitioner's right to use other
23 existing civil remedies.

24 (w) The Judicial Council shall develop forms, instructions, and rules relating to
25 matters governed by this section. The petition and response forms shall be simple
26 and concise, and their use by parties in actions brought pursuant to this section
27 shall be mandatory.

28 **Comment.** Subdivision (t) of Section 15657.03 is amended to reflect nonsubstantive
29 reorganization of the statutes governing control of deadly weapons.

30 For guidance in applying this section, see Section 16015 (determining existence of prior
31 conviction).

32 **Note.** A similar amendment of Section 15657.03 was recommended by the Commission in
33 *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports
34 217, 1309-15 (2009), and was enacted as 2010 Cal. Stat. ch. 178, § 106. That amendment did not
35 become law, because it was chaptered out by another amendment of the same section. See AB
36 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 26; see also Gov't Code § 9605 (specifying how to
37 resolve conflict between two bills that amend same section).